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THE

HISTORY AND GOVERNMENT

OF

WEST VIRGINIA

BY

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ILLUSTRATED

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PREFACE.

Among the subjects required by law to be taught in the free schools of West Virginia are State History and Civil Government. The purpose of this work is to supply what the State does not have in one volume, or indeed in any number of volumes, an adequate text-book on those subjects, as well as a history and manual of the State and its institutions of government that may not be without interest and profit to the general reader.

Within a very few years educators have come to recognize that the best results are obtained in the teaching of state history and civil government by beginning at home. When this work was announced not more than two States were using text-books written with this object in view. All others had attempted to generalize upon the government of forty-five different States, whose institutions differ at so many material points that generalization for primary study is without practical value. A number of States have recently adopted text-books written for the specific purpose of teaching together as one course the history and government of the particular State for which each book is intended. Each State has a history and institutions of government so peculiarly its own that the study of the two subjects cannot be profitably separated. No profitable distinction can be drawn between history and politics. The method of presentation adopted in this book follows the natural and logical order of historical development. The historical method has been adhered to all the way through. It seeks to point out not merely what our institutions are but indicates the sources from which they are derived, the process by which they were selected and adapted to our ever changing conditions, and the social and political agencies that have given them their present form and force. The main analysis of the subject has therefore been cast into three parts, each part having its essential relation to the other two parts, and to the whole. The topical arrangement of the sub-

jects discussed, in their natural and logical order, it is hoped will be found of material aid to both teacher and student, as well as to the general reader.

Part I gives a concise and straightforward narrative of the events attending the occupation of the transalleghany country by the white race, from the earliest time, points out the physical features of the country, locates the main wilderness roads, and follows the march of settlement along these forest pathways, over the mountains, among the hill, and along the valleys to the Ohio. It carefully takes note of the physical geography of the region, and explains the influence that it has exercised upon the lines of settlement, and the charcter, habits, and institutions of the people. The Indian wars, the Revolution, and the Civil war are considered not with the details of a reminiscence (for this may be read elsewhere) but as social and political movements affecting the development and destiny of the State. The unmistakable desire, on the point of realization at the moment of the Revolution, for a separate province west of the mountains, is traced through its many phases and causes ending in the formation of the State of West Virginia. The events and policies of each governor's administration receives distinct treatment. The industrial history of the State is carefully disclosed; and, as a preparation for understanding the system of free schools introduced as a state institution, this part concludes with a brief chapter on educational history.

Part II discusses the government of the State in the light of the history of its origin. The county is considered first because it came into existence first. The derivative units of local government, including all minor civil divisions less than counties.—the old parish, the township, the magisterial district, the school district, and municipal corporations,—follow in chapters arranged in systematic and logical order. The history of elections from the quaint methods of colonial times to the present adaptation of the Australian ballot system, is carefully presented. With this introduction and preparation

the student is ready to enter upon the consideration of the State, which is next presented in a discussion of the general definitions and principles which underlie its organization, its constitution, its legislative, executive, and judicial departments, its institutions for carrying on business relating to government by the State,—its schools, reformatories, asylums, prisons, etc.—and its boards and commissions for the regulation and inspection of other business carried on in the State by individuals.

Part III concludes the work with a mere outline in historical perspective of the origin and general structure of the Federal Union, which is essential to a perfect understanding of the State, whose existence the Union presupposes. This outline is intended as an introduction to the study of the Federal Constitution. While it is brief it contains quite as much as is usually devoted to this subject in a work of this character. The best informed educators in the theory and art of teaching are agreed that the attempt to teach our Federal system before the student has gained a knowledge of local government, and particularly a knowledge of the government and institutions of his own State, is going at the subject from the wrong end. As brief as this part is, it will nevertheless be found to contain much that is not contained in any other work of a similar character, and in language so simple that it may not be misunderstood.

Any one of these parts may be studied independent of the others, but the suggestion is made that the book be taught in the order in which the topics are presented. The work has been subjected to the most critical analysis in the arrangement of chapters and paragraphs for the purpose of enabling the reader to seize the essential facts without unnecessary labor. The bold-face headlines of each paragraph will be found helpful in this respect. No teacher should require a pupil to commit to memory any sentence in this book. It is not intended to be taught that way. If properly presented to the pupil, the events, subjects, dates, places, conclusions, and

all depending upon them, will naturally fix themselves in the mind of the learner, and the study of our history and government will become easy, pleasant, and profitable. No questions, answers, reviews, summaries, or directions for the teacher will be found herein. The authors have not so poor an opinion of the teacher in the West Virginia schools as to suppose that he can not supply these according to the needs of his school.

It is the pleasure of the authors to acknowledge the patient kindness extended to them by some of their friends in reading and criticising some portions of the manuscript. This service was performed by His Excellency Governor George W. Atkinson, former Governor A. B. Fleming, Honorable James C. McGrew, Frank Cox, Esq., Judge Okey Johnson, Professor St. George T. Brooke, Professor Charles H. Patterson, and Mr. John T. Harris, Clerk of the State Senate.

In the preparation of this work a division of the labor was inevitable. Mr Maxwell wrote Chapters I-X, XII, XXII, and XXIII. Mr. Fast wrote Chapters XI, XIII-XXI, and XXIV-XLIII. But the two collaborators contibuted material for the whole and constantly aided, consulted, and checked the work of each other.

Owing to the unclassified, unedited, and chaotic condition in which the sources for writing the history of the State and its institutions are found, it is more than the authors dare hope for, if error has not crept in somewhere. But when found they promise to take it out, not let it stand. They will regard it as an act of kindness in any reader, who may discover an error in any statement of fact, if he will point it out with the sources of his information, in order that the correction may be made in any future edition.

THE AUTHORS.

Morgantown, 1901

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PART I.—HISTORY.

"Let us search more and more into the past; let all men explore it as the true fountain of knowledge, by whose light alone, consciously or unconsciously employed, can the present or the future be interpreted or guessed at."—Carlyle.

"I do not in the least want to know what happened in the past, except as it enables me to see my way clearly through what is happening to-day."—Morley.

"Between history and politics I can draw no distinction. History is the politics of the past: politics are the history of the present."—Freeman.

THE HISTORY AND GOVERNMENT OF WEST VIRGINIA.

PART I—HISTORY.

CHAPTER I.

INTRODUCTORY.

1. **Settlement of Virginia.**—It is necessary to a proper understanding of the history of West Virginia that a brief outline be given of the first settlements of Virginia, together with the conditions under which those settlements were made. Columbus discovered the West India islands in 1492. Five years later John Cabot landed upon the continent of North America, being the first white man to set foot upon its shores in modern times. Through him the continent became known to the English, and they based their claim to the country upon his discovery. Very soon after that time the Spanish discovered Mexico and the southern coast of the United States, and they also claimed the continent by right of discovery. They soon planted colonies and sent military expeditions to take possession. But the English were slow in strengthening their claim by establishing settlements. One

hundred and nine years elapsed after Cabot's discovery before any part of the American continent became the permanent home of English people. Jamestown was the first colony that survived. It was established in 1607 on James River, fifty miles from its mouth.

2. **Remarkable Ignorance of Geography.**—The best educated people of that time were remarkably ignorant of American geography. Ships had sailed along both the Atlantic and Pacific coasts, and the Spanish had penetrated toward the interior in several places; but the greater part of North America was totally unknown. The explorers had little knowledge of distance and poor ideas of direction. Spanish maps made at that time show the western coast of North America extending westwardly across the Pacific Ocean in the latitude of Hawaii. On the other hand the English and Dutch explorers, who first mapped the Atlantic coast, imagined that the Pacific Ocean was no farther away than the Blue Ridge. They actually sailed up the Hudson, the James, and the Potomac, hoping to reach the Pacific by those routes—as though a river could have its mouth in one ocean and its source in another. Virginia lost territory from time to time. The first division was the cutting off of the northern part to make New England. Then came other subtractions, the last of which was in 1863 when the western part was taken off to form West Virginia.

3. **The First Colonists of Virginia.**—Before the beginning of the seventeenth century the English people had never planted colonies farther from home than Ireland and Scotland. The race was hardy and vigorous. It contained all of the elements necessary to development and expansion. The wilderness of the New World was the field where the seeds of civilization were speedily to take root and grow. The time was ripe and the conditions were favorable. England had come off victorious from its wars with Spain, which was, at that time, considered the most powerful nation in the world. The English soldiers on land and sailors at sea had met no equals.

The people of all classes were inspired with confidence and were aware of their strength. They did not hesitate to undertake the great work of civilization which the outcome of events and the evolution of nations had set before them. Theirs was the task of redeeming from a wilderness the newly-discovered continent of North America, and of placing it in the front rank of the nations of the world. The English were the only people at that time who were competent to do that great work. Colonies were planted in America by the Spanish, the Potuguese, the Swedes, the Dutch, and the French; but none other succeeded like those founded by the English people.

4. **Good and Bad Elements.**—At the close of the Spanish wars large numbers of the better classes in England were left without employment. There were soldiers and sailors, mechanics and skilled workmen. They became the strength of the Virginia colonies. They were reliable, sensible people, and their influence has had much to do with fostering the spirit of liberty and shaping its course in America. On the other hand some of Virginia's early settlers were not so desirable. At one time nearly one-fifth of the population of Virginia was made up of men who had been banished from England for transgressing the laws. Jamestown was made a penal settlement for English convicts. Those unfortunate people were turned loose upon the community. Nevertheless, the result was not so bad as many feared it would be. Perhaps one-half of the imported convicts would not today be classed as hardened criminals. At that time, under the laws and in the courts of England, offenses which would now be regarded only as petty thefts or as breaches of the peace, were punished with great severity. That which to-day would be punished by a few days in jail, or a small fine, was then considered worthy of the dungeon for years, or banishment for life, or the gallows. With this knowledge before us, it can readily be surmised that many of the expatriated settlers in Virginia were not villians, but rather were unfortunate persons willing to

lead upright lives if given a chance. When they found themselves in a new country, surrounded by changed conditions, and removed from the vice and temptations which had environed them at home, many of them became peaceable and industrious citizens. With the first settlers there came also many who styled themselves gentlemen. They had never done any work and never expected to do any. They counted upon making money by speculation. If that should fail, they intended to live in idleness upon the labors of others. They soon learned better. No money could be made by speculation in a country where there was no money; and those who were idle were left to starve. The gentlemen found it necessary to betake themselves to labor like the others, and they became valuable members of the colony.

5. **The Physical Geography of Virginia.**—Climate, soil, and the natural features of a country, often have much to do with its history. It is not so far from England to Labrador as from England to Virginia; and Labrador was discovered first. Yet, to this day, Labrador is a wilderness, because its climate is inhospitable and its soil poor. Virginia invited the planter. Its soil was fertile;its climate was mild; its harbors were large and safe; its rivers were navigable; its forests were abundant and furnished lumber for houses and wood for fuel. For the first hundred and fifty miles toward the west no mountains barred the path of the settler. If disease was at first exceptionally fatal to the colonists, it was due more to their own ignorance than to any miasmal condition of the country. Both the Potomac and the James rivers received tributaries from the very summit of the Alleghanies; and, flowing across the low countries to Chesapeake Bay, they were all natural highways by which the pioneers moved, year by year, toward the west. The mouths of those rivers are very wide, made so by the washing of the tides which twice a day flow up from the ocean, and ebb back. In many places the coast of Virginia is but little above the water of the ocean. There are few hills

and no mountains to turn aside the winds which bring rain from the sea. The country is made productive by timely showers, and vegetation is luxuriant.

6. **Hardships and Dangers.**—Such were some of the advantages of country and climate which the wilderness of Virginia, three hundred years ago, offered those who came from England in search of homes. Yet the colony passed through many hardships and dangers before firmly establishing itself upon the sure foundation of agriculture. The people did not understand the conditions which surrounded them. Instead of clearing ground and raising something to eat and something to sell, they spent much time in a fruitless search for gold. Then they turned their attention to the raising of tobacco, to the neglect of nearly everything else. As a consequence, many persons nearly starved to death, and there was no prosperity in the colony. For the first few years the settlement contained no women and children. The men did not regard the country as a permanent home, but only as a temporary abode. This condition was very hurtful to the enterprise. But, in course of time, the men married wives who had been sent from England. The Indians taught the art of clearing ground and raising corn. Cattle, sheep, and hogs were introduced from Europe. Land became individual property instead of belonging to a company in London. The people possessed a voice in the management of their affairs, and elected a legislature, although its members were few and its powers were very limited. Thus the Jamestown colony was established upon a firm basis. More than once it had been upon the verge of ruin; and once the people had actually left it and had set out upon their return to England. But before they had reached the open sea they met a ship with food and supplies, and, taking courage again, returned to Jamestown and went to work with renewed energy. New settlers came; activity took the place of despondency; and cabins and cornfields broke the wilderness solitude for many miles along the James River, and between that stream and the Potomac. At the end

of fifteen years there were eighty settlements and three thousand people in Virginia. In 1619 twenty negro slaves were brought from Africa in a Dutch ship and sold to the Virginians. That was the beginning of negro slavery in the United States.

7. **The Indians of Eastern Virginia.**—When that portion of Virginia between the Blue Ridge and the sea first became known to the English, it contained a scattered Indian population, probably not more than one person to each square mile. The settlers at once came in contact with the natives, who were generally harmless but not always so. Powhatan was chief of the principal tribe, and lived in a village near the site of Richmond. The Indians of that region were divided into many small tribes, those of the center of the state being of the nation of Sioux, whose kindred survive in the West. The tribes near the mountains had moved down from the North, and belonged to the Iroquois. They were at that time slowly pushing back or exterminating the Sioux and other Indians of that region. The coming of the white people put a stop to the victorious movement of the Iroquois, whose power none of the other tribes of the East and South seemed able to resist.

8. **Settlement of the Shenandoah Valley.**—The English settlements reached the base of the Blue Ridge in a little more than one hundred years after the founding of Jamestown. Between the Blue Ridge and the Alleghany Mountains lies the Shenandoah Valley, often called the Valley of Virginia. The settlers from that valley were an important factor in shaping the early history of what is now West Virginia. The majority of the colonists on the Shenandoah had not moved westward from the settlements along the coast of Virginia. In fact, the people of that valley were not pure English, but a mixture of Scotch, German, Irish, Dutch, Huguenot, and English. They came largely from Pennsylvania, between the years 1730 and 1750, and many of them were members of the Presbyterian Church. Thus a new factor entered into the history of Vir-

ginia; and the history of West Virginia must take account of it. Not only the descendants of the early colonists at Jamestown, but also the descendants of the first settlers in the Shenandoah Valley, were among the pioneers who later crossed the Alleghanies and built cabins on the Kanawha, the Monongahela, and the Ohio.

CHAPTER II.

UPPER POTOMAC SETTLEMENTS.

1. **The First Cabins.**—The homes of white men made their appearance in the valley of the South Branch of the Potomac, and in the neighboring regions, soon after the building of the first cabins in the Shenandoah. The beginning was about the year 1735. No mountains of a difficult nature interfered with the movements of homeseekers and adventurers from the Shenandoah to the South Branch. They could ascend the Potomac River, or they could take the shorter route across North Mountain. Two days was sufficient time for the journey from the one valley to the other.

2. **The Land Belonged to Lord Fairfax.**—That part of West Virginia now included in Mineral, Hampshire, Hardy, Morgan, Berkeley, Jefferson, and portions of Grant and Tucker counties, was the property of Lord Fairfax, when the first settlers entered that region. The King of England had granted this land to some English gentlemen many years before any white men lived west of the Blue Ridge. It had passed into the hands of Lord Fairfax, who had no intention of selling it. He was anxious, however, to have it occupied and improved, hoping thus to receive large rents from thousands of tenants. The rates of rent were very low, amounting to no more than usual taxes; and so long as the tenants paid punctually, they could not be compelled to remove from the property. The estate of Lord Fairfax lay between the Potomac and the Rappahannock, and was enclosed on the third side by a line from the fountain spring of the one river to that of the other. One of the stones, set up in 1745 to mark the extreme northern and western corner of the Fairfax estate, stood till recently at the

common corner of Tucker, Preston, and Grant counties, West Virginia, and Garrett County, Maryland.

3. **The Settlers.**—The people who first occupied the South Branch region came chiefly from the Shenandoah Valley. The prevailing element among the earliest of the colonists, particularly in what is now Hardy and Hampshire counties, was Holland Dutch, and many of the names of the first pioneers are still found in the region, among them being Strader, Bowman, Blue, Van Meter, Keuykendall, and Haight or Hite. There were many Germans also, and among the names still borne by their descendants are Minear, Stump, Snyder, Woolford, and Brake. Irish and Scotch were there likewise, and their names were Ashby, Pearsoll, Cunningham, Wilson, and Ruddell. Of the pure English, there were the Jackson and Parsons families. Romney was founded by Pearsoll, who built a fort there, which was of much importance during the French and Indian war. Pendleton County was settled very early, largely by Germans from the Shenandoah Valley.

4. **Washington's Journey to the South Branch.**—One of the earliest written accounts of the country and people along the South Branch, and also in the present county of Mineral, is contained in the diary of George Washington, written when he was sixteen years of age. He had been sent to survey the lands of Lord Fairfax in that region, in the year 1748. Even at that time settlements were scattered from the source to the mouth of the South Branch. The people are described as unable, or unwilling, to speak English; and Washington says they followed the surveying party through the woods and furnished amusement by their antics. It may be inferred from the small amount of surveying done on that occasion that Lord Fairfax had rented but little land in that vicinity, and that very few of the people had any claim to the land which they occupied. The county records at Romney, where nearly all of Lord Fairfax's land transactions in the South Branch Valley are recorded, strengthen the belief that the

first settlers in that region were nearly all squatters upon the land. The number of leases, particularly in the earlier years, were few in comparison with the number of people there at that time.

5. **The Fairfax Land Confiscated.**—During the Revolutionary war Lord Fairfax, then very old, remained a firm friend of England, although he continued to reside in Virginia, and the long-existing friendship between him and General Washington was not interrupted. His neighbors treated him with great respect because of Washington's known friendship for him. When he heard of the surrender of Cornwallis, which he knew would end the war, he went to bed and soon died. At the close of the Revolution his lands were confiscated and became the property of Virginia. They were thrown open to settlement in the same manner as other state lands, and in time became the property of thousands of farmers. It is not for the best interest of any country that very large tracts of land should belong to any one person who either lets them lie idle or occupies them with tenants, as Lord Fairfax wished to do. Such tracts of land should be sold in small parcels at fair prices.

6. **Proposed Manors.**—Lord Fairfax had set apart a manor of 40,000 acres on the South Branch and another of 9,000 acres on Patterson's Creek, intending to convert them into estates occupied by the lord and his retainers, as was the custom in England. But the confiscation of his lands fortunately put an end to all projects of that kind.

CHAPTER III.

WILDERNESS HIGHWAYS.

1. **The Mountain Barrier.**—The Alleghany Mountains were a barrier not easily passed by the emigrant seeking a home in the West. For a quarter of a century after the tide of migration reached the eastern base of that range, none crossed it. The country beyond was little known, and the paths by which it could be reached were few and difficult. The bleak series of summits was a divide between the known and the unknown, until explorers and adventurers began to penetrate the region beyond. Even then, the homeseeker was slow to follow.

2. **Attempts Successful and Unsuccessful.**—As early as 1670 and 1671 Henry Batts reached the valley of New River. A period of forty-five years followed before another attempt at exploration was recorded. In 1716 Governor Spotswood, of Virginia, led a party of explorers over the Blue Ridge, across the Shenandoah River, and to the eastern base of the Alleghanies; but he did not reach the present territory of West Virginia. Within nine years after that time the Potomac River, above its passage through the Blue Ridge, had been explored; and twenty years after Governor Spotswood's expedition, William Mayo ascended to the very source of the Potomac, passed the summit of the Alleghanies, and discovered tributaries of Cheat River, in the present county of Tucker. There is reason to believe that the Kanawha Valley, as far west as Charleston, had been visited before that time. In 1745 surveyors for Lord Fairfax were sufficiently acquainted with the eastern slope of the Alleghanies to make a fairly accurate map of por-

tions of Grant and Mineral counties, and of the adjacent region of Maryland. Four years later, surveyors were locating lands on the Greenbrier River, and in the same year the white man's cabin was to be found within the present county of Pocahontas.

3. **Explorations by Traders.**—Adventurers who traded with Indians were the real discoverers of routes by which the Alleghanies could be crossed At a time when there were only two settlers' cabins in West Virginia, west of the mountains, traders by scores were passing between the eastern cities and the Ohio River. As early as 1747 no fewer than three hundred traders reached the Ohio; and the next year one caravan of seventy horses, loaded with furs, made the journey from the Scioto River to Philadelphia. These traders followed two general trails westward from Winchester: the one passing by the site of Cumberland to Pittsburg; the other ascending the Potomac to its source and crossing to the Greenbrier and thence to the Kanawha.

4. **The Nemacolin Trail.**—In the year 1750 the Ohio Company, an association of speculators and merchants, trading with the Indians, employed Colonel Thomas Cresap to discover and mark out the best route for a path from the site of Cumberland to the site of Pittsburg. Colonel Cresap lived fifteen miles east of Cumberland and was well acquainted with the region, having been engaged in the survey of Lord Fairfax's estate. He knew many Indians, and he employed one named Nemacolin to mark the best route to the Ohio. The Indian performed the service well and was suitably rewarded for it. The path became known as Nemacolin's Trail. It played an important part afterwards in the westward movement. Four years later George Washington widened the path while leading an army on the ill-fated expedition which ended at Fort Necessity. He conducted over the road, as far as the Monongahela, the first wagons that ever crossed from the Atlantic slope into the Mississippi Valley. The next year General

Braddock improved the road and extended it nearly to Pittsburg. In the years which followed, it was the chief highway between the East and the West. But it had only an indirect influence on West Virginia's history. Other lines of travel, although they were mere paths, were of more importance to our State.

5. **The McCullough Trail.**—There were a number of paths crossing the Alleghanies within what is now West Virginia. Over them the pioneers made their way from the settlements in the East. Nearly all of these paths, if not all of them, were trails which had been used by Indians long before. And it is not improbable that the Indians did not make the paths, but that they were the beaten trails of buffaloes in their periodical migrations in search of food. The first path south of Nemacolin's was McCullough's, so called from a trader of that name who traveled by that route between the Shenandoah Valley and the Ohio. This trail left the South Branch near the site of Moorefield, in Hardy County, crossed the Alleghanies near Mount Storm, reached the head of the Little Youghiogheny River in Maryland, and continued through Preston County where it was called the "Eastern Trail." Thence it continued to the Ohio. General Washington followed that trail from the South Branch to the Youghiogheny in his journey to the West in 1784.

6. **The Horseshoe Trail.**—About twenty miles southwest of the McCullough Trail, another path crossed the mountains. It was known as the Horseshoe Trail because it crossed Cheat River at a place known as the "Horseshoe." This path branched from the McCullough Trail near where the town of Gorman, in Grant County, now stands. Not far from the Fairfax Stone it crossed the dividing ridge which separates the Potomac waters from the tributaries of the Monongahela; and, descending Horseshoe Run, it crossed Cheat River, passed over Laurel Hill to the Valley River, two miles below Philippi, and continued to the Ohio. The first settlers in Tucker, Bar-

bour, Upshur, Lewis, and Harrison counties, followed that path from the East; and over it was brought, by Thomas Parsons, the first wagon that crossed the Alleghanies in West Virginia. Over the same trail John Minear carried on horseback the irons for the first sawmill erected between the Alleghanies and Laurel Hill in West Virginia. He built the mill on the site of St George, in Tucker County.

7. **The Seneca Trail.**—Thirty miles south from the Fairfax Stone was the Seneca Trail, sometimes called the Shawnee Trail, because Indians of that tribe followed the path in 1758 after they burned Fort Seybert, in Pendleton County. The path was the best-defined in West Virginia. It led from the mouth of Seneca Creek, in Pendleton County, across the Alleghanies to Dry Fork of Cheat River, thence, through an almost impenetrable wilderness of pine and laurel, to Tygart's Valley, where the town of Elkins now stands. It followed Tygart's Valley River nearly to its source, crossed to the head of the Little Kanawha, and thus reached the Ohio. At the present day this path can be traced many miles through the wilderness. In places, where it crossed primeval forests, it is so deep that it has more the appearance of a trench than of a path. It exposes the gnarled and twisted roots of hemlocks which, no doubt, were trodden by the moccasined feet of the red warriors long before the first civilized man passed that way. Over that path came the first settlers of Randolph County, and it was a highway for packhorses many years. Some of the soldiers returning from the Dunmore war in 1774 followed that path to their homes in Hampshire County and in the Valley of Virginia. During the Civil War the old path was picketed by Union troops to guard against Confederate raids; and more than one deadly encounter took place among the laurel and the pines which probably had known the war whoops of savages two centuries before.

8. **The Pocahontas Trail.**—Thirty miles south of the Seneca Trail another path crossed the Alleghanies to the headwaters

of Greenbrier River, in the present county of Pocahontas. It was occasionally called the Dunmore Trail. One branch of it crossed into Randolph County, and another led southwesterly and reached the Kanawha. This trail was a highway for traders as early as 1748, and it was followed by many of the first settlers of Greenbrier County. The first wagon to cross the Alleghanies into the Kanawha Valley, was taken over that trail by Jacob Warwick. The wagon was soon afterwards burned by Indians when Warwick's buildings were destroyed. Still south of that path was another which became a highway between the Greenbrier River and the East. The early settlers in West Virginia crossed the mountains by these paths. Many years elapsed before wagon roads were made.

9. **Washington's Canal Routes.**—George Washington was one of the first statesmen to see the necessity of something better than paths to connect the East with the West. He knew that the highway into the Ohio Valley must be over the Alleghanies; and that, if some highway were not provided, the people there would look to the Mississippi and to the Gulf of Mexico for a market for their products. This would probably lead to a political separation between the East and the West. There would then be two countries instead of one. Washington wanted but one country, and he wanted that country to include the East and the West, the North and the South. He realized that measures must be taken to bind the sections together; to unite them by trade and common interests. To reach that end, he planned the digging of two canals, connecting the Atlantic seaboard with the waters of the Ohio. He had the project in mind as early as 1775.

16. **A Postponement.**—The Revolutionary war came on at that time and demanded Washington's energies, and not until the close of the war did he again take up the great work to which he had given so much thought. In 1784 he examined in person a route for a canal up the Potomac, nearly to its source; and from the highest point on the river to which the

canal could be constructed, a road thirty miles long was to be built over the mountain to the Monongahela or the Cheat. The other canal was to reach the Ohio by way of the James and the Kanawha. Subsequently, the canals were constructed nearly to the eastern foot of the Alleghanies. But by that time the invention of the locomotive and the construction of railroads relegated canals to the past, and those projected by Washington were never finished to the Ohio.

11. **An Unpeopled Wilderness.**—The territory now embraced in West Virginia, or at least that portion of it lying between the Alleghany Mountains and the Ohio River, had no inhabitants when it first became known to the white men. It was an unpeopled wilderness. It cannot now be ascertained that there was within it the wigwam of an Indian who claimed it as his home. Hunting parties moved through it, made their camps here and there for a while, and passed on. In Ohio and in western Pennsylvania the Indians had homes, but none in West Virginia or Kentucky. An erroneous idea exists with some people as to the aborigines with whom the pioneers of our State came in contact. The savages did not live in the neighboring woods like wolves, prowling about the deep ravines and dense thickets, coming occasionally into the clearings to pillage and murder. Indians, as a rule, lived in small villages, with cultivated truck patches about them. Those who made raids into West Virginia came from beyond the Ohio, or from western Pennsylvania. Some came from Canada, Indiana, or Illinois. It was not unusual for Indians to travel very great distances to wage war, not only against the white people, but also against other tribes.

12. **Evidences of a Former People.**—There is no lack of evidence that the country from the Alleghanies to the Ohio, and along the upper Potomac, was inhabited not many generations before the advent of the first settlers. Sites of villages may be identified to this day by chips of flint left by the arrow makers; by beds of ashes a few inches below the surface of the ground,

marking hearths where fires burned for long periods; by graves in which rude stone implements are found, and occasionally human bones in all stages of decay; and by other unmistakable evidences. But these villages and their inhabitants had ceased to exist when the first explorers crossed the mountains. Old fields, without timber, or only a second growth, were found in our State, both east and west of the Alleghanies.

13. **Who Were the Vanished People?**—The inhabitants who dwelt in West Virginia west of the mountains, when last it had inhabitants before the coming of the white men, were Indians. But there is not absolute certainty as to the tribe or tribes. The Iroquois, a powerful Indian nation whose principal lands were in New York, drove them out in the latter half of the seventeenth century. The Iroquois were ruthless conquerors. They waged war upon "the whole world," so far as they knew of the world. Their campaigns were carried to Boston, to the Mississippi, and almost to the Gulf of Mexico. They did not occupy the lands when they had drived the former owners away. Thus, when the white people first became acquainted with the country, central Pennsylvania, West Virginia, and Kentucky were without inhabitants.

Only in recent years has the study of the Indians been taken up in a scientific manner. Their languages are now learned and compared. This is beginning to solve many a vexed problem, and it shows, more than was ever before suspected, how restless the Indians were, and how great were their wanderings and migrations. Names which they gave to rivers and mountains are the milestones showing the courses which the Indians had traveled and the places where the had lived. Tribes wandered hundreds, or thousands, of miles, not in any one general direction, but in every direction. What was evidently one tribe in prehistoric times, was split into fragments, and these fragments are now found far apart; and not until their languages were learned and compared, did any one sus-

pect that they had a common origin. The Sioux may be cited as an apt illustration of this, and particularly so, since it is believed that the cradle of that powerful nation was in West Virginia and Western Pennsylvania, on the waters of the Allegheny River, the Monongahela and the Kanawha. They left their old home, probably, before the discovery of America. The early explorers found them scattered from the Potomac River southward to the Gulf of Mexico (the Catawbas and Mobilians were Sioux); and, on the other hand, they were found in the west from Arkansas, far north into British America. Relatives of Sitting Bull marched with Washington against the French at Pittsburg in 1758.

CHAPTER IV.

PHYSICAL FEATURES.

1. **West Virginia's Climate.**—There is greater diversity of climate in West Virginia than in almost any other equal area in the United States. On the eastern side of the Alleghanies the climate is different from that on the western side; and that of the high plateau region is different from both. The State's topography is responsible for this. No less could be expected in a region so small, with a vertical range of four thousand feet, from the highest to the lowest; with a portion of the land set to catch the east wind, a portion to catch the wind from the west, and a portion set to catch every wind that blows. Two well-defined systems of winds, blowing from opposite directions, meet in West Virginia. Clouds from the Atlantic Ocean, and clouds from the Pacific, meet and mingle their rains upon the summits and slopes of the Alleghanies. Generally speaking, the land east of that range has the warmer and dryer climate. In the mountain region the summers are never very warm and the winters are always very cold. On the highest mountains the thermometer sometimes falls thirty degrees below zero; while, in summer, it may rise to ninety-six in some parts of the State.

2. **The Fall of Snow.**—The depth of snow varies with the locality and altitude. Near the tops of the high mountains snow six or seven feet deep is not unknown. In 1831, between the Alleghanies and the Ohio River, it accumulated to a depth of three feet. In 1856, in the valleys just west of the mountains its depth was three and one-half feet. In 1784, near the top of the Alleghany Mountains, there was a summer frost which

killed large trees. In 1859, on June 5, a similar frost visited most of the State. The summers of 1838 and 1854 were almost rainless. On the bank of North River, in Hampshire County, is a place where the ice remains among the rocks all summer. Near Cheat River, in Preston County, is another such place. The ice forms in the cavities of broken rocks in winter, and its preservation in summer is due to a thin covering of soil which prevents the circulation of air through the cavities where the ice is found. On the headwaters of Black Fork, in Tucker County, are dense beds of laurel and forests of spruce, sheltering depressions of the rocky soil where ice and frozen ground may be met with in midsummer.

3. **The Annual Rainfall.**—The average yearly rainfall for West Virginia, including melted snow is about four feet. That is, if the rain should remain where it falls, it would, in one year cover the whole State with water four feet deep. In some years the amount of rainfall is three or four times greater than in other years. The average is always greater west of the Alleghanies than east, and greatest near the summit. Our rains and snows come from two general directions—from the east, and from west of southwest. Local storms may come from any quarter. Eastern storms are usually confined to the regions east of the Alleghanies particularly in summer. Snow storms from the east more frequently cross the mountains. The clouds which accompany the eastern winds, come from the Atlantic Ocean. The high country which follows the summits of the Appalachian ranges from Canada almost to the Gulf of Mexico, is the dividing line between the two systems of rains and winds which visit West Virginia. Storms from the Atlantic move up the gentle slope from the coast to the mountains, precipitating their moisture as rain or snow along the way. They strike the abrupt eastern face of the Alleghanies, expending their force and giving out the remainder of their moisture. They seldom cross to the western side.

4. **Holding Back the Clouds.**—The Blue Ridge is not high enough to interfere seriously with the passage of clouds across its summit. But the Alleghanies are usually a barrier, particularly for eastern storms. As the clouds break against the sides of the lofty cliffs and peaks, there often are terrific rains below, while little, or perhaps none, falls on the summit. On such an occasion an observer on one of the Alleghany peaks may look down upon the storm, witness the display of lightning and hear the roar of the thunder beneath him. Winds which cross high mountains seldom deposit much rain or snow on the leeward side.

5. **The Western Rains.**—It having been shown that the eastern part of our State receives the chief portion of its rains from the Atlantic Ocean, it remains to be seen that the western rains come from a different place. All general and extensive rains are derived from moisture taken up by the sun's heat from some one of the earth's three principal oceans, the Atlantic, the Pacific, or the Indian. The moisture is carried by winds through the air and is precipitated upon the land or into the sea. Our western rains come from very far away. In the wide and warm region of the Pacific Ocean, between South America and Australia, they have their origin.* The wind which brings them travels ten thousand miles before it reaches the West Virginia hills. It passes the equator, strikes the coast of Mexico, crosses that hot country, and pursuing a course a little north of east, reaches us. Elements disturb this wind, and occasionally and temporarily turn it aside, but it pursues its general course with such persistency that we seldom want for rain very long. The warm wind from the Gulf of Mexico and the Caribbean Sea is the chief disturber that affects us; but sometimes cold winds from British America sweep down and break, for a few days, the current from the far southwest. Year by year, unfailing, but with some variation, the never-resting currents of air

* See Maury's "Physical Geography of the Sea," and the wind and rain charts which accompany it.

bring us rains from the far-away Pacific. In one sense, there are few things so changing and fickle as the wind. It comes in puffs and goes in whirls; yet there are immense currents of air, blowing round the world with speed often much-greater than the fastest railroad train. They move from the equator to the poles, and from the poles to the equator, in channels as regular and as constant as those of the rivers of the land. A lofty range of mountains in one continent may cause a desert in another. It may turn aside the rain winds from a land on the other side of the world. The Andes Mountains, rising above the clouds in South America, are supposed to be the cause of the great desert in northern Africa. The Sierra Nevada range in California shuts out the rain clouds from Nevada and Utah.

6. **The Clouds.**—It would be a mistake to suppose that clouds come from very far away. A cloud lasts only a few hours. When one melts away, another takes its place. The clouds are made of moisture, as is well known; yet there may be more moisture in the air on a clear day than on a day that is cloudy. The difference is that on a clear day the atmosphere's moisture is not condensed, and for that reason it is not visible. In proportion to size, a white cloud contains as much rain as a black cloud. The chief difference between them is that the black cloud is so thick that the light from above cannot shine through, while the white cloud is thinner and does not wholly obstruct the light. The highest clouds, in summer as well as in winter, are composed of snowflakes, or floating frost, and are sometimes as much as nine miles high. Five miles up, a thermometer would probably never rise above zero. Ten miles up, the temperature is believed to average not less than one hundred degrees below zero—colder than the coldest night at the North Pole. We are thus always quite near very severe weather. Sudden cold spells are more often due to the dropping down of the cold air above us than to the coming in of cold air from far away.

7. The Use of Rain.—**Everyone knows that rain is essential to the life of vegetation. It moistens the ground and dissolves mineral substances on which plants feed. But rain plays another important part in rendering a soil productive. It adds elements of fertility to the soil. Rain water is often considered very pure. It is far from it. It is filled with impurities** collected from the air through which it passes. Ammonia, which is essential to plant life, is always present in rain water. It is sometimes so abundant that it gives to the water a peculiar taste. The soil which collects and retains this ammonia becomes fertile. Besides this, the rain collects from the air floating particles of dust, often microscopic plants and animals, and adds them to the soil. Sufficient impurities of that kind sometimes fall in a single shower to make a preceptible film on pool of water; or, if it be in winter, the result is a black snow.

8. **Soil: What is It?**—The soil of a country is the covering of the solid rock which usually lies a few feet, or a few inches, below the surface. Soil is made of rock ground into pebbles, sand or dust, and mixed with decaying remains of plants or animals. Trees and plants that send their roots into the ground, derive very little nourishment from the disintegrated rocks; but they are fed by the decaying organic matter. A rich soil contains plenty of organic substance in progress of decay. A poor soil has little or none. A fertile field is rendered sterile by planting it with a succession of corps until the organic matter is exhausted. Continually taking something away and putting nothing back will rob a soil as surely as a corn crib will be made empty by continually taking corn out and putting none back. When a soil has become poor, it can be made fertile again by adding to it some element on which plant life feeds. Ground can be rendered fertile by turning under its own product, there to decay and mold. This is because a considerable part of the vegetable growth is derived from the air, and not from the soil. When the crop is plowed

under, it adds to the soil more than the growing crop took from the soil. For the same reason, the ground in a forest where the annual fall of leaves is left to decay, becomes richer year by year. If, however, the land is so steep that the decaying leaves are washed away by rains, the soil will grow poorer. But the lowlands and valleys where the decaying matter will find lodgment, will become fertile at the expense of the steep hillsides. Forest fires are doubly destructive. They not only kill the trees, but they strip the ground of its leaves, rendering it bare and sterile. The protecting blanket of leaves being burned off, the soil is left unprotected against the attacks of dashing rains; and the fine grains of sand and dust are washed away, leaving naked rocks where forests once flourished.

CHAPTER V.

MANNERS AND CUSTOMS.

1. **Difficulties Encountered by Early Settlers.**—Emigrants who go to a new country usually find that difficulties, for the first few years, are greater than in the older country. This was the case in pioneer days in West Virginia. The people who took up their homes west of the Alleghanies, came from communities where they had more advantages and where the earning of a livelihood did not cost such a struggle. The imaginations of persons who really know but little of the conditions of the frontiers, often surround the life of the pioneers with a halo of romance which does not belong to it. The lot of the first settlers was hard. The hope of better things was, in reality, the mainspring of their perseverance. As the time in which the pioneers lived recedes in the past, the tendency to view it as romantic grows more and more. In this case, distance lends enchantment. The reality was very stern; the fiction is very pleasant. It is time that history should dispel the glamour which romance has cast round the early times, and should show how earnest was the purpose of the first settlers, how troubled were the times, and how hard the life.

2. **The Spirit of Adventure.**—A persistent spirit of adventure, itself a manifestation of strength, always had an influence in the westward movement. The men could have lived very well where they were; but the wilderness of the West, little explored and vaguely known, seemed to promise something better. The spirit of expansion and of conquest was upon the people. The pioneer demanded room. He wanted acres. He wanted freedom in its largest sense; not so much

a freedom of thought or worship, as a freedom of action. The majority of the frontiersmen were not scholars, thinkers, or religious enthusiasts. They came to take possession of land with wide borders. They claimed and exercised the privilege of possessing the wilderness and making of it a civilized country. It was with them as much a matter of intuition as of reason. For the accomplishment of this great purpose they were willing to labor, to face danger, to fight, and, if necessary, to die in the cause of civilization and in the very van of its onward march. History has no lesson more instructive than the lives of these heroic men.

3. **Seeking a New Home.**—When the pioneer and his family left their eastern abode for a new home west of the Alleghanies, they possessed few household goods. There were a few pots and kettles, an ax or two, some wooden or pewter dishes and vessels, homespun clothing, a rifle, a horse or two, and little more. The horses, equipped with wooden packsaddles, carried all of the chattles, and sometimes carried the small children. The larger members of the household traveled afoot. Thus they followed paths across the mountains, perhaps not seeing a human abode for days. At night they slept by a fire in the woods, and by day they trudged through the sun or rain. When they had reached their destination and had selected in some fertile valley the place of their future abode, they fell to work with energy, building a house to shelter them.

4. **The Woodsman's Cabin.**—The house which the settler built was of logs. It was usually small, one room and probably a rude attic. The logs were sometimes hewn, more frequently not. The doors and floors were of timbers flattened with an ax. Nails were not often used; and if used at all, they were such as were hammered into shape in a neighboring blacksmith shop. The spaces between the logs were closed with blocks of wood, or with stones, and with a plaster made of mud. Every article of furniture was homemade. The

chimneys was spacious, often capable of receiving logs ten feet long. Stoves were unknown. Cooking was done by the open fire. The crane, which was an iron hook fastened in the chimney, served for hanging the kettle. The doors were thick enough to be bullet proof. Defense against Indians was, for many years, the first consideration. Windows were few and small, seldom containing glass. A greased paper pasted over an aperture a few inches wide and a few feet long, served to let in light. Often there was no window of any kind in the cabin. Such a house was not warm in winter. Many chinks let in the cold. Lamps of the rudest kind only were in use. They consisted of a pan of grease with a cotton string laid in for a wick. Candles were a luxury. Blazing pine splinters took the place of the lamp in many cabins.

5. **Farms and Crops.**—Much labor was required to clear the small fields with which the first settlers surrounded their cabins. Fire did as much as the ax. Logs were burnt off by throwing one across another. They were afterwards rolled into heaps and burned. Plowing was as often done with oxen as with horses. The chief crop was corn. Flax in small patches was raised. It was broken, hackled, spun, and woven at home. From it the summer clothing of the family was made. Woolen clothing was not so easily provided, because sheep raising was difficult on account of wolves and other wild animals. Fruit was not abundant for many years after settlements began in western Virginia. The planting of orchards came later. Probably the oldest apple orchard in the State, west of the Alleghanies, was planted at Beverly, Randolph County, in 1775. A few of the trees are yet living. Hogs being able to defend themselves against wild animals, were found profitable. Aside from pork, the family's meat came largely from the woods. The settlers were expert hunters and lived much of the time in the forests. They often spent too much time at hunting and too little at work. Some of the clothing was made of dressed skins of deer.

6. Markets and Trading.—The people had but little to sell and could buy but little. Furs, skins, and ginseng were the chief articles sent to market. They traded these commodities for salt, iron, and the few necessary articles which they were unable to make at home. Their markets were eastern towns, Williamsburg and Baltimore very early, and Winchester and Cumberland later. Packhorses went on those distant journeys, and each neighborhood sent a caravan at least once a year. There were no roads, only paths. Often not even the overhanging branches of trees, or the large logs across the path, were cut away. Bridges were not thought of. Ferries were few.

7. The Culture of the People.—Such a country as this—just making a commencement at settlement—could not boast of much education or culture, except what some of the people brought with them from their former eastern homes. Books were few. Exact statistics on the subject are wanting, but it is doubtful if, on the average, there was one book to the cabin in the early years of West Virginia. The manner of life did not encourage literary culture. If books had been desired, many of the people could not spare money to buy them. An examination of writings and signatures in the courthouses of our State, belonging to the first quarter of the century after the earliest settlements were made, shows how low was the standard of education, even among persons who had charge of public affairs, and who, no doubt, were above their neighbors in point of education. Even the clerks often misspelled the most common words; and signatures of justices of the peace were frequently illegible scrawls. Schools, in the ordinary sense of the word, did not exist in the earliest years of the settlements. Later, in the more thickly peopled districts, the teacher was sometimes found. He was nearly always a man of limited education. If "he could write and cipher too," it was deemed quite sufficient. The pupil who could master the arithmetic to "the rule of three" (simple proportion) was considered well educated. Poor children, if left orphans, were

taken to raise by a neighbor, who gave bond to the county court, guaranteeing that he would treat them properly. He usually agreed to pay them a few dollars when they should become of age. The State of Virginia did very little for the cause of popular education. Almost every other State in the Union did better.

8. **Churches and Religion.**—Church buildings and religious services were not common. Occasionally an itinerant preacher visited the settlements and exhorted the people. These preachers were sometimes able men, and they were always earnest. The evidence available on the subject does not warrant the statement that the frontiersmen of western Virginia were religious as a class. At least, religion was not a characteristic so common as it was with the settlers of the Shenandoah Valley. Drunkenness was not a prevailing vice, yet it was not so uncommon as many suppose. Western Virginia, and especially the Monongahela Valley, distilled much whisky and brandy before the close of the Revolutionary war. All of the whisky was not exported. It was the levying of a tax upon the product which caused the Whisky Insurrection soon after the close of the Revolution. The trouble, however, was confined principally to Pennsylvania.

9. **Mills.**—The corn grown in the fields of the pioneers was sometimes prepared for food by pounding it on the hominy block. In other cases it was ground on hand mills. But one of the first enterprises in each community was the building of a custom mill for grinding corn. A few of the mills made flour of wheat and rye. The stones used in grinding corn were usually made from hard stone found in the neighborhood. The buhrs for wheat were generally imported and were for that reason scarce and expensive. Mills were driven by water power where such power was obtainable. Where water was not available, treadmills, run by horse power, were the best the people had. The horse which carried the grist to the mill must, in accordance with the customs of the country,

help to grind it. One mill to each one hundred square miles was sufficient. These mills were the meeting places for the men. There they heard the news of the neighborhood. Newspapers were not then in circulation on the frontiers. The county court was of equal importance with the mill as a place for hearing the news. It was not unusual for men to travel fifty miles to attend court, where their sole business was to meet their neighbors and hear the news.

10. **The Past and Present.**—The belief is common that men, and morals, and health, and everything connected with them, were better a long time ago than now. No historian believes this. Facts do not warrant the belief. Men, morals, society, opinions, doctrines, and all belonging with them or to them, are better now than they were a few generations ago. There is a constant growth of good and an unceasing diminution of evil all the time. The grandfathers were not better than their grandsons. The frontiersman was brave, industrious, and generous, but he had his faults and failings. He did not enjoy better health than men do now; not so good. He was often rheumatic, because he wore moccasins which let in the water, instead of shoes which kept it out. He slept often in the woods and was cold. That made consumption prevalent on the frontiers. He ate coarse food, poorly cooked. That made him dyspeptic. His eyesight was frequently poor, because it was injured by the pine-knot light of his cabin. His sensibilities may not have been dulled by the hard life he led, but certain it is that fatigue and suffering, either of the body or of the mind, never elevated character or purified life. The frontiersmen had arduous labor to perform, difficult duty to do. They were fitted for the work. But let not the erroneous belief continue that they were better than the men of this generation.

CHAPTER VI.

HISTORY AND GEOGRAPHY.

1. **The Subject Stated.**—History cannot be properly understood without a fair knowledge of the geography of the country under consideration. It is presumed, however, that the pupil who enters upon the study of history, has already become sufficiently acquainted with geography to enable him to understand all the terms descriptive of the features, natural and artificial, of sea and land. In its form West Virginia is one of the most irregular of States. Its boundary lines are broken and curved. Nearly every one of the many lines which circumscribe its 24,000 square miles, has a history of its own.

2. **Mason and Dixon's Line.**—The line on the north, between our State and Pennsylvania, is called Mason and Dixon's Line. These were the names of two engineers who surveyed the line westward from the Delaware River to western Maryland. After much controversy, and after several years of delay, the line was finally extended to the point which is now the southwestern corner of Pennsylvania. By the establishment of that line, the long and bitter quarrels between that State and Virginia were brought to a close. Territory which Virginia had claimed and which had been divided into counties, was found to be on the northern side of Mason and Dixon's Line, and thus became a part of Pennsylvania. The courthouse of Monongalia County was found to be in Pennsylvania, and the county seat was moved to Morgantown. From the western extremity of Mason and Dixon's Line, another line was run due north to the Ohio River, and became the

boundary between western Pennsylvania and the northern Panhandle of West Virginia.

3. **The Ohio River Boundary.**—In 1784 Virginia ceded to the United States all of its territory northwest of the Ohio River. The western bank of the Ohio, at low water, is the line. Virginia gave up this large territory at the request of other States. They were jealous of Virginia, fearing that she would become so large and powerful, when her lands beyond the Ohio should become populated, that her influence in Congress, and elsewhere, would become so predominant that it would imperil the welfare of the other States. North Carolina, South Carolina, Georgia, Connecticut, Massachusetts, and New York also ceded to the United States their western lands. But none of them, or all of them together, gave up so much as Virginia.

4. **The Potomac River as a Boundary.**—In fixing their common limits Virginia and Maryland had trouble. Each consented, at a very early date, that the Potomac River should be the line between them; but when the time came for defining that river they could not agree. From the mouth of the stream to the mouth of the South Branch, there was no occasion for quarrel; but at that point the disagreement began. Maryland claimed that the South Branch was the real Potomac; Virginia insisted that the North Branch was the river. By substantiating her claim, Maryland would gain about two thousand square miles. Engineers surveyed the streams, measured the water flowing in them, and ascertained that the North Branch was the larger. A commission which investigated the matter, reported that the North Branch is the real Potomac, and it was fixed as the line. Lord Fairfax's surveyors had reached the same conclusion as early as 1736. Maryland acquiesced temporarily, but has never regarded the matter as settled; and she is now endeavoring, in court and out, to obtain a large portion of West Virginia's territory lying north of the South Branch.

5. **The West Virginia Plateau.**—As already explained, our State is very irregular in outline. It is also unusual in its topographical form. One portion of it rises into a plateau, which in shape may be compared to a large bubble, covering a third or more of the State. Its highest part is in Pendleton, Pocahontas, and Randolph counties. It slopes in all directions from its highest part. The chief rivers of the State have their rise there, and they flow off in all directions. The tributaries of the Monongahela flow north. The streams emptying into the Potomac and the James flow east. The Elk and the Little Kanawha take their way westward. Branches of the Kanawha follow a southern and southwestern course. A high arm of this table-land curves round toward the southwest. The New River, with its source in North Carolina, sweeps up from the south. It is at first on the eastern side of the plateau, but it turns toward the west, cuts through the table-land from side to side, and joins the Kanawha. All of the principal rivers of West Virginia, as well as some of those of Virginia, have their sources in this plateau.

6. **Stony Lands.**—The mountainous portions of West Virginia are often very stony. It is not impossible for the active minds of the young to learn useful lessons from what appears to be the dullest part of nature, the stones, the rocks, the cliffs which obstructs our paths, direct the course of our rivers and give form to our mountains. We walk over their broken fragments. We observe upturned edges protruding from the soil. We see ledges in the lowest valleys, and cliffs on the higest mountains. They all teach us lessons, if we will but learn and understand. Only the simplest facts can be comprehended by the young. Yet so vast is the field for research that the greatest scholars in the world can never explore it all. The West Virginia hills and valleys will show new beauties and hold greater interest if we will learn the simplest lesson which the rocks may teach us.

7. **Sand and Lime.**—In the first place, the rocks found in West Virginia are of two kinds, sandstone and limestone,

The former is composed chiefly of sand, the latter largely of bones and shells of microscopic marine animals. Sandstone is found nearly everywhere, limestone in certain localities. There is seldom much difficulty in distinguishing between them. The grains of sand of which the one is composed vary in size from the finest dust to rounded pebbles as large as beans or marbles. Some sandstone consists almost wholly of rounded pebbles (nearly always white or yellow) united in one mass and held together by a kind of cement. Other sandstones are made up of grains of sand so small that the naked eye cannot detect them.

8. **Under the Sea.**—Every rock in West Virginia, be it large or small, sandstone or limestone, was formed at the bottom of the sea. The ocean then covered our whole State, as well as much of other States that are now dry land. That was so long ago that no one can measure the time by years. While the ocean covered all of this region, there was land east of where the Blue Ridge now stands. Rivers from that land carried mud, sand, and pebbles into the sea; spread them in layers over the bottom, one layer upon another, until the accumulation was thousands of feet deep. The enormous mass was pressed by its own weight for ages. This pressure, combined with other agencies, converted the mass of mud and sand into rock. That portion of the accumulation which was mostly pebbles is now very coarse sandstone; the part which was mud is now finer grained sandstone.

9. **Limestone.**—In that ancient sea there was formed limestone as well as sandstone. To the parts of the sea which were far from shore, only a little sand could find its way. In those places limestone was formed. Shells and skeletons of marine creatures settled to the bottom. They piled deep over vast areas, and the pressure of their own weight crushed them and cemented them into a solid mass of limestone. Those who are acquainted with the process of burning lime have observed that sometimes very pure lime can be obtained.

Again, there will be pieces of rock which will not slack. And in other cases, the lime will have so much sand in it as to be worthless. There are reasons for this. The pure lime is made from rock composed almost entirely of shells and skeletons. In other cases, little lumps or layers of sand were mixed with the shells while the limestone was forming. These are the pieces which will not slack. Lime which is too sandy to be of value is made from limestone containing a large quantity of sand.

10. **The Cementing Material.**—Since sandstone is made up of grains of sand, what holds these grains of sand together? Something must do it, else the most solid rock would crumble till it would be a heap of sand. The grains are cemented together in one of three ways. Sometimes it is with iron which was held in solution by water and was precipitated upon and around the grains, uniting them in one mass. A sandstone of that kind is usually of a reddish color, which color is due to the rust on the iron. The second method of cementing the grains of sand together is by the substitution of lime for iron. The lime was derived from the sea water in the same manner as the iron and was deposited upon the grains of sand in the same manner. The third cementing material is glass (silica) and it, too, was derived from the sea water in the same manner as the iron and the lime.

11. **Silicia.**—In the preceding paragraph the words "silica" and "glass" are used as if they are the same thing. It should be explained that glass and silica are not exactly the same, but so nearly alike that but little confusion will result from the use of the words as above. Silica performs a very important part in rock-making. It constitutes the bulk of sandstone. It not only is the cement which holds the grains of sand together, but the grains of sand themselves are nearly pure silica. It is not far from correct to say that many kinds of sandstones are really glass. This appears more probable

when it is remembered that sand is the material from which manufacturers make glass.

11. **White and Yellow Pebbles.**—In some portions of West Virginia, particularly in the mountain region, large masses of rock are made up of white and yellow pebbles. Sometimes the rocks which formerly held them have dissappeared, and only the pebbles are found, lying scattered about the surface of the ground. These pebbles are only grains of sand larger than usual. Other sand is of the same shape and color, but the grains are so small that their forms cannot be readily seen with the naked eye. Look at sand under the microscope, and it is seen to be a pile of rounded pebbles, white or yellow. The larger pebbles, which we call sand, are nearly pure glass. Geologists call them quartz.*

12. **Whence Came the Quartz?**—Where did these rounded pebbles, large and small, come from? The answer may be that they came from the sandstones which had fallen to pieces, thus setting free the pebbles that were formerly held in the compact mass. This answer is correct so far as it goes, but it does not go back far enough. The bebbles were pebbles before they were cemented into sandstone at the bottom of the sea. They were derived from rocks older than the foundations of the Alleghanies, They were washed from an ancient land and deposited on the botton of the sea which then covered West Virginia. They are the fragments of rocks broken from ledges of that old land. But that white rock was not sandstone and was not limestone. It contained neither sand nor shells. It was not composed of particles of anything cemented together. It was not like any rock now found in ledges or masses in West Virginia. It was quartz. It was formed under water by the process of crystalization. It was

* In the foregoing definitions and comparisons the aim has been to convey to the young reader a few general facts, in language as free as possible from technical terms, even at the expense of exact chemical precision.

made in the same manner as crystals of sugar are formed in the bottom of a barrel of molasses. The syrup holds the sugar in solution, and it crystallizes. The sea water held silica in solution and it crystallized and became quartz. This quartz was, in the course of long ages, broken up; it became small fragments; they rolled in the brooks; they were ground in the rivers; they were fretted on the sea beach; and at last they were deposited in the ocean depths, with all their rough corners rounded, and they became cemented into a sandstone. Thus it is seen that a mass of pebbles, held together by cement, is called sandstone; but the pebbles themselves are not sandstone, but quartz. How many of us have walked over the white pebbles all our lives without stopping to think of their wonderful past? The oldest structure built by human hands in the world, when compared in age with one of the white pebbles which we pick up in the road, is but as one day to a thousand years.

13. **Rocks Originally Horizontal.**—It may be profitable to carry the study of the rocks a few steps further. We have seen that they were formed at the sea bottom. They lay in great, flat sheets, covering areas as large as our State. These sheets or layers are called strata. A stratum might be a few inches thick, or it might be many thousands of feet thick. In the area now occupied by West Virginia, the accumulations of sand and shells continued until they were several miles thick, and until they had filled the sea almost or quite to its surface. The sheets of rock lying deepest are the oldest. The different divisions have been given names, the name indicating the age in which it was formed. The oldest known in West Virginia is the Cambrian. The next above it is the Silurian. Above this is the Devonian. The highest stratum and the newest rock is the Carboniferous. It is so called because coal is found among rocks of that age. The eastern face of the Alleghany Mountains is composed mostly of rocks of the Devonian age.

14. **The Uplift of the Land.**—It appears that the rocks forming the plateau region of West Virginia were raised above the sea all as one body, without much twisting or breaking. They became dry land. Rivers cut channels for themselves from the highest part of the plateau down its sides until they reached the ocean or joined other rivers. No mountains of importance existed in West Virginia at that time. The mountains were formed afterward. The channels which the rivers cut then are practically the same as they flow in now.

15. **How Mountains Are Made.**—Mountains are not all of the same age; and very often they are not as old as the rivers which wash their bases. Some are very old; some very recent; some now in process of making; some almost worn away. The chief ranges of West Virginia's mountains were formerly stupendous foldings of rocks. The strata, aggregating thousands of feet thick, were subjected to very great pressure from the southeast and the northwest. This pressure was caused by the shrinking of the earth's crust. The rocks were compressed into folds and arches. The result was a series of parallel ranges of mountains which now form the Appalachian system. The Alleghany Mountain is a remnant of one of these folds. Cheat Mountain, Rich Mountain, Laurel Hill, New Creek Mountain, Mill Creek Mountain, Shenandoah Mountain, North Fork Mountain, South Fork Mountain, and Backbone Mountain, are remnants of the vast folds into which the original layers of rocks were bent. Most of these mountains have already been stripped of thousands of feet of their summits and sides.

16. **How Valleys Are Made.**—Valleys are largely the creations of rivers which flow through them. Rivers are powerful destroyers. They cut hills to pieces; they wear mountains to sand; they form valleys where mountains once were. When the rocks were folding, bending, and pushing up in the mountain-forming area, a fold sometimes happened to rise directly across the channel of a river. In such a case, the mountain

was not able to turn the river aside; but the river was able to cut its way across the mountain, making a gap through it from side to side. Examples of this are numerous in West Virginia. The Potomac cut a gap through the Blue Ridge at Harper's Ferry. The South Branch cut Mill Creek Mountain at Hanging Rocks. Mill Creek made a passage for itself through the same mountain at Mechanicsburg. Patterson's Creek wore a gateway for itself through New Creek Mountain at Greenland Gap. The North Fork cut across the same mountain at Hopewell. Tygart's River cut a gap through Laurel Hill in Randolph County. Cheat River made itself a passage through Briery Mountain in Preston County. Examples might be multiplied almost indefinitely. In all of these cases the rivers were there first. The folding strata which subsequently formed the mountains, were forced up so very slowly that the rivers were able to keep the ledges worn away as they arose.

17. **The Power of Running Water.**—If a river can cut a gap through a mountain which is being formed across its channel, it can readily be understood that an ordinary object would be able to offer no effective resistance to the ceaseless attack of a running stream. Rivers with swift currents cut downward, but have narrow valleys. Sluggish rivers have wide valleys, but do not deepen their channels. A very sluggish river has not sufficient current to carry away the sediment washed into it by rains, and its channel fills and makes its valley swampy. We have no such river in West Virginia.

18. **The Work of Rain.**—The forces of nature are incessantly at work leveling the land. Rivers transport to the sea the sand and silt which reach their channels. But a river, unless aided by other forces than its own currents, cannot obtain material beyond and above its own flood-plain. If rivers were the only excavating agencies, their valleys would be as narrow as the Canyon of the Colorado, if not as deep. Rain is the powerful ally which assists the rivers in carving

The landscape. Every shower washes dust, sand, mud, and pebbles, into the running brooks; the brooks carry the load to the rivers; the rivers carry it to the sea. Every rain washes soil from the high places to the low. Hills which are crowned with angular rocks are attacked by rain. In the course of ages all their irregularities are worn down, and in place of barren cliffs their forms are beautifully rounded, and perhaps their sides are covered with fertile soil. Rounded hills, rolling ridges, and undulating landscapes, indicate age and long periods of erosion. Sharp peaks and rocky spurs are not usually so old. However, the hardness of the rock upon the one, or its softness upon the other, may be responsible for the difference of form, though both be of the same age. A hard rock will resist much longer than a soft one; and a peak of bare, hard sandstone, like the Seneca Rocks, in Pendleton County, may be much older than a rounded knoll, with a core of soft shale, like those in Harrison County.

19. **The Work of Frosts.**—Rain will wash down to the brooks grains of sand or small pebbles which it finds ready to be removed, but it has little power to loosen or detach heavy masses, or to break large rocks into small ones. That work is done by frost. The few drops of water which find their way into a crevice of a bowlder or a cliff, will freeze and will force the masses apart. It is not an exaggerated statement to say that our mountains are being torn to pieces by frost. A crevice so small as to be scarcely visible will be opened by the expansive force of freezing water and will become a large crack in a few years. The aggregate destruction from that cause is enormous. It is much greater in the mountain regions of bare cliffs than in districts where the rocks are covered and protected by deep soil.

20. **The Work of Wind.**—The wind is of less importance as a geological agent in leveling the hills in West Virginia than in some other parts of the world. But it is, nevertheless, an industrious worker. It carries light dust from high places

and deposits it in low. In dry weather it sweeps sand into gullies and sluices, ready for the next rain to carry it away. But its most noticeable work is done among the peaks and bare rocks of exposed mountains. It enters sheltered places where rains cannot reach, and it whips out every loose grain of sand from crevices and crannies of cliffs. It even wears away the cliffs themselves by its friction against them. In mountain regions it is not unusual to see rocks with all of their under surfaces hollowed out and honeycomed. Sometimes solitary rocks have been so worn by wind that they stand on stems like mushrooms. They are about ready to tumble.

21. **The Formation of Coal.**—Coal is composed of wood, and the manner of its forming was, in some respects, similar to the forming of sandstone. When the sea which once covered West Virginia was so nearly filled with washings from land that it had become more a swamp than a sea, the growth of vegetation was very rank. The climate was hot and moist. Ferns and palms of enormous size covered the whole region. Their matted trunks and branches fell and accumulated. They were buried, and in the course of ages they were changed into coal. If one seam of coal is found above another it indicates that the lower was formed first, and the over-lying one is more recent. When wood for the first vein had accumulated it was buried by sand and mud, and in course of time another forest grew over it, which, in its turn, became coal.

CHAPTER VII.

SETTLEMENT OF WEST VIRGINIA.

1. **Division of the Subject.**—Not until after traders had traversed West Virginia in their barter with the Indians and had become familiar with the paths, did settlers begin to arrive. The colonization of the State may be roughly divided into four parts: east of the Alleghanies, which was a distinct epoch as to time; the Monongahela Valley and its tributaries; the Kanawha and its tributaries; and the banks of the Ohio. Each of these was, to some extent, independent of the others, and each has a history of its own. The settement of the eastern part of the State has been given attention elsewhere in this book. It was closely connected with the colonization of the Shenandoah Valley. The commencement of the white man's occupation of the region west of the Alleghanies will now be considered.

2. **The Ohio Company's Schemes.**—There were extensive tracts of land between the Monongahela and the Ohio which belonged to the Ohio Company, and that company made efforts, always unsuccessful, to plant large colonies upon its possessions. About 1750 arrangements were completed to found a colony of one thousand Germans from Pennsylvania between the Monongahela and the Ohio. The plan failed, because there was an unreasonable law in operation in Virginia, which required all of the inhabitants to be members of the Church of England or suffer persecution in the form of extra taxes. When the Germans learned that religious freedom was denied in Virginia, they refused to go. Other efforts of the Ohio

Company failed also; and the region was left to be settled by the unaided efforts of the immigrants who might choose to undertake it.

3. **Virginia Tries to Plant Colonies.**—Two years after the Ohio Company's failure to establish a colony of Germans west of the Alleghanies, the Virginia House of Burgesses attempted to carry out a similar enterprise, and met with no better success. Protestant settlers who would locate in Augusta county, west of the mountains, were promised ten years' exemption from taxation. The offer was subsequently increased to fifteen years without taxes No settlers accepted the offer. The French and Indian war began about that time, and Virginia had all it could do to maintain its settlements east of the mountains, without attempting to establish new colonies on western waters.

4. **In Tygart's Valley.**—About 1753 the first cabins on the waters of the Monongahela, within West Virginia were built. The location was in what is now Randolph County. Robert Files built his cabin at the mouth of a creek which has ever since been known by his name, and the place is now occupied by the town of Beverly. David Tygart's cabin stood three miles above Beverly, and Tygart's River bears his name. These men brought their families from the South Branch. Within one year the Indians murdered one family and drove the other back to the South Branch. The valley of the Monongahela, for five years after that time, was without an inhabitant south of Pennsylvania. In 1758 a few settlers came with Thomas Decker and located at Morgantown. Decker's Creek still bears his name. The colony was soon destroyed by Indians. Thus ended the second effort to colonize west or the mountains; and for the ten succeeding years it is not known that any attempt at settling the country was made.

5. **A Royal Proclamation.**—In 1763 the King of England issued a proclamation forbidding all persons to take posses-

sion of lands west of the Alleghanies, in Virginia, until the lands should be purchased from the Indians. This proclamation was issued through ignorance. No Indian tribe owned or occupied any portion of West Virginia at that time; and no part of it was ever bought of Indians who had any right to sell it. A considerable part of the land had already been granted to companies or individuals. Governor Fauqueir, of Virginia, issued three proclamations warning settlers west of the mountains to withdraw from the land. No attention, within West Virginia, was paid to the proclamations, for the probable reason that no settlers then occupied lands between the Alleghanies and the Ohio. In 1766 soldiers from Pittsburg were sent up the Monongahela to dispossess the people of their lands. It is not believed that they found any settlers within what is now West Virginia.

6. **The Deserters.**—In 1765 two soldiers, John and Samuel Pringle, who had deserted from the garrison at Pittsburg four years before, and had been hiding in the woods ever since, made themselves a camp in a hollow sycamore tree on the Buckhannon River, in the present county of Upshur. At the same time John Simpson, a trapper, made his camp near Clarksburg. These were the only occupants of the valley of the Monongahela south of Pennsylvania at that time. Four years later the camp of the Pringles became the center of a small settlement. Among those who arrived early in the history of that colony were John and Edward Jackson, great grandfather and grandfather, repectively, of the Confederate general, Stonewall Jackson. Other settlers were the Westfalls, the Hackers, the Cutrights, and the Hugheses, all from the South Branch. Within a year or two there were cabins in Lewis and Harrison counties.

7. **Second Settlement in Tygart's Valley.**—After the Indians broke up the first settlement in Tygart's Valley, nineteen years passed before another attempt was made to occupy that region. In 1772 a number of men from the South Branch,

and a few from the Greenbrier River, moved their families into what is now Randolph County. They located at Beverly at Huttonsville and Elkwater, and one or two cabins were still further up the valley. Thus there was a settlement twenty-five miles up and down the river. It was strong enough, not only to protect itself in the Indian wars which followed, but it was able to send assistance to other settlements when they were in danger. Among the first colonists of that valley were the Westfalls, Currences, Stalnakers; Haddans, Wilmoths, Crouches, Wilsons, and the Wamsleys. . Of these the Westfalls, Haddans, Wilmoths and Wamsleys were English; the Currences were Irish; the Wilsons, Scotch; the Crouches and Stalnakers were Dutch. These people communicated with the eastern towns by way of the Seneca Trail across the Alleghanies.

8. **An Inviting Valley.**—Tygart's Valley was one of the most inviting regions of the State, not only because of its wide expanse of level land but because it abounded in wild game, and was the paradise of the hunter. The last buffalo in the State was killed in that valley in 1825; the elk was not extinct on the Cheat Mountain ranges, overloooking the valley, as late as the Civil war; and the deer, the bear, and the wolf exist in that region to this day. In prehistoric times it was the home of a dense Indian population. This is made certain by the numerous paths which threaded it in all directions when first visited by white men; and by the camp sites, graves, mounds, and stone implements and weapons, which are still found in all parts of the valley.

9. **Cheat River Settlements.**—In 1774 a colony of forty or more persons from the South Branch, under the leadership of John Minear, a German, made a settlement on Cheat River, at the Horseshoe, in the present county of Tucker; but at that time it was Augusta County. Among those who came with Minear were Andrew Miller, Salathiel Goff, Philip Washburn, and Thomas Parsons. They made locations of land and

built a number of houses. During that year the Dunmore war occurred. A fort was built at the Horseshoe, and the settlers gathered in it for safety. There is no record that any person fell a victim to the savages, who incessantly skulked about, and finally the colonists grew weary of perpetual watching, and retreated in a body to their old homes on the South Branch.

10. **The St. George Settlement.**—Peace with the Indians was concluded in the full of 1774 and Minear with his colony would have returned to Cheat River the next spring, had not a dispute taken place between him and Thomas Parsons as to the ownership of certain land in the vicinity of the Horseshoe. In fact, neither owned the land, but both wanted it. The dispute was settled by an offer from Minear (who quoted the example of the quarreling herdsmen of Lot and Abraham on the plains of Jordan) that Parsons might have his choice of lands, inasmuch as there were other lands nearby that were just as good. Parsons took the Horseshoe. Thereupon Minear selected a site for his colony two miles down the river where the town St. George now stands; and in the spring of 1776 he established his colony. It became the center of the settlements for all that region. Eighty years later the court house of Tucker County was built on the exact spot where the fort had stood. In 1778 the three principal settlements near the western base of the mountains were, that at Morgantown, founded by David Morgan in 1768, that on Cheat River, and that in Tygart's Valley. They were the only settlements in the northeastern part of West Virginia which were garrisoned by soldiers during the Revolution as a protection against Indians.

11. **Other Colonies.**—Smaller colonies and scattered cabins at the commencement of the Revolution were to be found within the present counties of Preston, Marion, Taylor, and the territory further west. The region now included in Bar-

bour County did not become a dwelling place until near the close of the Revolution.

12. **The Greenbrier Settlement.**—The Greenbrier was the gateway to the Kanawha Valley. It became the home of white men very early. The first cabins in that region antedated by three years those in Tygart's Valley. The path which was followed by traders in their journey to the Ohio, passed through that country, and for that reason it was tolerably well known long before many other sections of the State had been visited. The first house or camp was there in 1749. The Greenbrier Company had obtained a large tract of land in that region, and had sent John Lewis to survey it. The country was fertile, and it attracted settlers.

13. **Designs of the French.**—Soon afterwards the French, who disputed the right of the Virginians to occupy the country west of the Alleghanies, prepared to build a fort in the yicinity of the Geeenbrier. By that means they hoped to prevent the colonization of the country by subjects of the King of England. But the fort was not built, the French did not interfere, and the Greenbrier colony prospered until the Indians broke it up a few years later. The people who escaped the savages, fled over the mountains to eastern Virginia. That was during the French and Indian war. It is believed that not a white man remained alive at that time (1758) in West Virginia, west of the Alleghanies. When the war closed the colonists returned to the Greenbrier and reoccupied their deserted farms. But Pontiac's war began soon after. The Indians came in the guise of friendship, and treacherously murdered many people. Those who were so fortunate as to escape, fled once more to Virginia, and for the next six years the Greenbrier was left uninhabited.

14. **The Country Recolonized.**—After the close of the Pontiac war, and in spite of the King of England's proclamation forbidding settlements west of the Alleghanies, and in defi-

ance of similar proclamations by the Governor of Virginia, the eyes of the frontiersman began to turn again toward the fertile lands and the fine hunting grounds on the Greenbrier river. In 1769 the country was reoccupied. New settlers poured into the region. The cabins of the pioneers were scattered many miles through the forests. The colony became so firmly established that it was never again in danger of destruction, although the Indians, in very strong force, invaded it afterwards. From the Greenbrier River as a center the settlements spread across the country to the Kanawha, and down that valley to the Ohio.

15. **The Ohio River Settlements.**—After the peace of 1765, the Indians having been temporarily subdued, the Ohio River became a highway between Pittsburg and the county further south and west. Traders and land speculators soon became familiar with both banks of the stream. A knowledge of the region at length spread to that class of people who were ever on the lookout for new regions where they could try their fortunes and find homes. In 1770 the first company of homeseekers reached the vicinity of Wheeling; and many others joined them in the three or four years following. From that time Wheeling became one of the principal centers of population and progress in West Virginia. It was influential in shaping the early history of our State. It was sufficiently strong to offer successful resistance to incursions of Indians, and it twice repelled attacks from large bodies of savages. In 1774 Fort Fincastle was built there. The name was subsequently changed to Fort Henry. For several years it was the most secure place of refuge from Indians on the Ohio, except Pittsburg. It usually had no garrison, but depended for defense upon those who fled to it in time of danger. Settlements were soon to be found near the site of Moundsville, and at the mouth of the Little Kanawha. Above Wheeling there were also many cabins; so that, before the close of the Revolutionary war, the eastern bank of the Ohio, for more than one hundred miles, was firmly held by white men.

CHAPTER VIII.

FIGHTING FOR POSSESSION.

1. **Contest for the Ohio Valley.**—Although but little of the actual fighting during the French and Indian war took place within West Virginia, yet the State's very existence depended upon the success of that struggle, and it is proper that more than a passing notice should be taken of those stirring events of frontier history. In 1754 the French and Indian war began, and it continued seven years. This was the first war after West Virginia settlements began. In that war the French were allies of the Indians. The trouble grew out of the rival claims of the French and English to Canada and the country between the Alleghanies and the Mississippi. English colonists had settled the coast from Maine to Georgia, and as far westward as the base of the mountains. In some places the English settlements were beginning to cross the Alleghanies. The French had settled Canada, and they were building forts and establishing trading posts in the valleys of the Ohio and the Mississippi with the purpose of holding all the country between Canada and the Gulf of Mexico. They based their claim upon discovery. Their traders and missionaries had first explored the region. The English claimed it also, because they wanted it. It was the natural region for the westward expansion of their colonies. In 1753 the French already had a pretty firm hold on Canada, but they were just beginning to occupy the Ohio Valley. The English believed that further encroachment by the French upon the disputed territory should be checked.

2. **George Washington's Mission to the French.**—Late in the year 1753 the Governor of Virginia learned that the French were builning forts on the Allegheny River. That region was then claimed by Virginia, and the Governor sent George Washington to carry a letter to the French officer in command. The letter requested the French to withdraw from that country. Washington was at that time twenty-one years old. At the beginning of winter, accompanied by Christopher Gist, an experienced woodsman, he set out upon his long journey through the wilderness. He passed the site of Cumberland, in Maryland, and of Pittsburg, and ascending the Allegheny River, he delivered the letter to the French officer at the fort. The reply was given in writing, and Washington set out upon his return. It was now winter, and the weather was very cold. After many narrow escapes, at one time from drowning, at another from freezing, and again from Indians, Washington reached home.

3. **The Virginians Plan an Expedition.**—The reply of the French officer to the request that he withdraw his forces from the Allegheny River, convinced the Governor of Virginia that strong measures must be adopted or the French would obtain possession of the Ohio Valley. An expedition was sent from Virginia the next spring to build a fort on the site of Pittsburg. Other troops, commanded by Colonel Fry, followed some days later for the purpose of garrisoning the fort. Washington was second in command of the troops under Fry, and in a short time all the responsibilities of the enterprise devolved upon him. Work had scarcely begun on the proposed fort at Pittsburg when one thousand French, with eighteen cannon, came down the Allegheny River, and gave the Virginians one hour in which to pack up and leave. Resistance was useless, and the little company of Virginians set out for home.

4. **The Death of Jumonville.**—By that time the expedition under Colonel Fry, on the march to Pittsburg, had reached

the western side of the Alleghany Mountains. When the advance party, under Washington, arrived in the vicinity of the Monongahela River it met an advance party of French. A fight took place; the French were defeated, and their leader, Jumonville, was killed. That was the first skirmish of a war which raged seven years in all parts of the world, wherever French and English came in contact. The chief theater of the war in America was Canada and the Ohio Valley. The result was that the French were defeated, their power in America was destroyed, and the foundation was laid for the future greatness of the United States. It was a contest for a continent rather than for the possession of a few valleys. Let us trace the leading events of that important war.

5. **The Surrender of Washington.**—The conflict opened inauspiciously for the English. After Jumonville was killed Washington learned that a large French force was coming from Fort Duquesne (now Pittsburg) to fight him. Not feeling himself strong enough to give battle successfully where he was, he retreated to the Great Meadows, a point in southern Pennsylvania. There he built Fort Necessity. The French, who were assisted by Indians, soon made an attack. The battle was severe, and the French proving too strong, Washington was compelled to surrender. The enemy was generous and permitted him to march his army back to Virginia. This surrender occurred July 4, 1754, just twenty-two years before the Decaration of Independence. France was left for the time in possession of all the country west of the Alleghanies.

6. **Startling Proposition by the French.**—It was with much surprise, in January, 1755, that the English received a proposal from the French that neither should occupy the country between the Alleghany Mountains and the Ohio River. That territory now comprises the larger part of Western Pennsylvania and West Virginia. The proposal of the French, had it been accepted, would have left it an uninhabited wilderness, separating the French possessions in Ohio from the

English colonies east of the mountains. The French were trying to drive a shrewd bargain. The English were not deceived. Their reply was equally startling to the French. They proposed that France destroy all its forts in the Ohio Valley, as far west as the Wabash River; raze the forts at Niagara and Crown Point; surrender Nova Scotia; and leave as a neutral desert, the country between the Bay of Fundy and the St. Lawrence River. Perhaps no one expected France to accept this proposition; yet, she would have gained by doing so. For in the end she was left without an acre of the disputed territory. Instead of granting what England demanded, France sent three thousand soldiers to America. The English also sent an army under General Braddock.

7. **The March to the West.**—War had now commenced. The English planned their campaign. They intended to strike the first blow at Fort Duquesne, which was the gateway to the Ohio Valley. From that point General Braddock expected to march to Canada and drive the French from that country. His route lay from Alexandria, Virginia, through Winchester, to Cumberland (then called Will's Creek), and from that point to Pittsburg. He was joined by troops from the colonies, chiefly Virginians and Pennsylvanians. Washington was an officer under Braddock. In June the army left Cumberland, moving slowly over the mountains, repairing or making the road as it advanced.

8. **Braddock's Defeat.**—Nothing but success was expected. But hopes were doomed to disappointment. On July 9, when within nine miles of Fort Duquesne, at a place still known as Braddock, the concealed army of French and Indians fired upon the English. The troops under Braddock were on open ground, the enemy behind rocks and trees. The battle was very severe for two hours. The British regular soldiers were seized with panic, and they added confusion to the battle. It is believed that the whole army would have been destroyed

had not Washington and the Virginians stood their ground and enabled the regular soldiers to get away. As it was, the slaughter was appalling. Of the three companies of Virginians (240 men), only thirty remained alive. Washington had two horses killed under him, and four bullets passed through his clothes, but he was not wounded. Braddock had placed all his dependence upon the regular soldiers whom he had brought from England. On different occasions he had cast slurs upon the Virginians and other American troops. But when the battle came, his regulars wasted their ammunition and then ran like sheep. Washington and the Virginians stood their ground and did the only effective fighting done by Braddock's army that day.

9. **The Retreat.**—The General was mortally wounded. Washington brought off the remnant of the army, leaving 714 men upon the field, dead or dying. The retreat was toward Cumberland. Braddock died upon the road, and was buried at night within a mile of Fort Necessity. Reenforcements under Colonel Dunbar were met coming up; but no effort was made to check the retreat. Military stores to the value of half a million dollars were destroyed. They might have been saved by taking them back to Cumberland. So complete was the destruction that nothing was left for the army to eat, and it became necessary to send to Cumberland for provisions to feed the troops while retreating to that place. Nor did the panic cease when Cumberland was reached; but Colonel Dunbar, who was then in command, fled with his British regulars to Philadelphia.

10. **Washington Did Not Lose Heart.**—Washington at once became the hope of the Virginians. He remained cool in the midst of excitement and danger. With what troops were left behind, he built or repaired the fort at Cumberland and made the best arrangements possible for resisting the attacks of the French and Indians, if they should pursue. Fortunately, there was no immediate pursuit. In the exultation of victory,

and laden with spoils, the enemy returned to Fort Duquesne after the battle. The combined forces of the French and Indians at the battle did not equal one-half of the English army.

11. **Indians Attack the Settlements.**—The news of the defeat spread rapidly. The alarm was great. From New York to South Carolina the frontiers prepared for defense. Indians poured over the Alleghanies and attacked the settlements. From one end of the Virginia frontier to the other the smoke of burning cabins told that the savage was at work In the region along the Potomac, in Hampshire and Berkeley counties, the people took shelter in forts. Occasionally they sallied out and attacked the enemy with some success. But gradually the settlements were broken up, until only two forts between Winchester and Cumberland held out. Hundreds of panic-stricken refugees took shelter at Winchester; and many would not risk themselves even there, but retreated to older settlements. The colony on the Greenbrier River was broken up, and not a white man was left in West Virginia west of the Alleghanies. The savages raided the upper parts of the Valley of Virginia and broke into the settlements on the headwaters of the James River.

12. **The Labors of Washington.**—That was the darkest period which the frontiers of Virginia ever knew. But in the gloomiest time, and in the hour of greatest danger, the courage of Washington never faltered, although his hope was often very low. He went from settlement to settlement, building forts and assisting and encouraging the people to arm and defend themselves. It was then that he wrote: "The supplicating tears of the women, and the moving petitions of the men, melt me with such deadly sorrow that I solemnly declare, if I know my own mind, I would offer myself a willing sacrifice to the butchering enemy, provided that would contribute to the people's ease." The Governor of Virginia, not knowing what he ought to do, was about to order the

abandonment of the fort at Cumberland. Washington urged, in the strongest language, that such a course would be disastrous, and the fort remained. During all that time of danger, Washington never ceased to urge the sending of an army to the Ohio to drive the French from Fort Duquesne and thus break up the chief rallying place of the Indians. Three years elapsed before Washington's hope was realized.

13. **Killbuck's Invasions.**—The settlement on the South Branch were at times entirely broken up. At other times the farmers would venture back when there came a lull in Indian hostilities. The leaders of the Indians on their raids into that country were sometimes Frenchmen, sometimes their own chiefs, the most noted of whom was Killbuck. In 1756 he conducted a party of sixty into the present counties of Grant and Hardy, and committed many murders. Two years later with a band of about the same number, he invaded Pendleton County, and appeared before Fort Seybert, twelve miles northeast of the present town of Franklin. In all probability the fort could have made a successful resistance; but it surrendered without firing a shot. More than twenty of the inmates were tomahawked. The Indians then returned to Fort Duquesne.

14. **Expedition to the Ohio.**—The first expedition by the English to the Ohio below Pittsburg occurred in 1756. The Indians had grown so troublesome that a body of militia was sent to invade their conntry, under command of General Andrew Lewis. In midwinter he marched with great hardship through the region south, of the Kanawha, crossed into Kentucky and was about to pass the Ohio River and enter the Indian country, when he was overtaken by a messenger with orders to return. He obeyed with reluctance. His men almost starved while returning. Eighteen years later he commanded the Virginia army at the battle of Point Pleasant.

15. **Expedition Against Fort Duquesne.**—During the three

years which followed the defeat of General Braddock, Washington did not cease to urge upon the commander-in-chief of the British forces in America the necessity of driving the French from Fort Duquesne. Not until 1758 was he to see his cherished plan put into execution. The British had, however, in the meantime, carried the war into Canada; and having successfully attacked the French there, had greatly weakened them in that quarter, and thus had rendered easier the task of reducing Fort Duquesne. The expedition to the Ohio consisted of 6,000 men, made up of regulars from England and Scotland, and militia from Virginia, Pennsylvania, and the other colonies. The whole force was under General Forbes; but the important work of the expedition was done by Washington. A new road was made from Cumberland to Pittsburg. The summer was spent in laborious road making. Had it not been for Washington, General Forbes would never have seen the Ohio.

16. **Fort Duquesne Falls.**—General Forbes was sick, unable to walk, or to ride on horseback. On November 5 he was yet many miles from the objective point of the expedition, and had decided not to advance further that season. But he permitted Washington to move forward with 2,500 men. Then began energetic work. Forbes with his whole army had been able to build only one mile of road a day. Washington, with less than half the army, made eight miles a day, and moved steadily toward the fort. On the night of November 24 a heavy explosion was heard. The magazine of Fort Duquesne had been blown up by the French, who despaired of resisting successfully the attack which they knew would be made within a few hours. They fled down the Ohio to Illinois. Washington's army arrived at the smoking ruins in time to see the last boatload of French disappearing round a bend in the Ohio.

17. **The Result.**—The war closed soon after the fall of Fort Duquesne. The results were important and far-reaching. It

was a triumph for the Anglo-Saxon race. The Ohio Valley, and all the central and northern part of the North American continent, were rescued from the French, and the English became the rulers. The French and Indian war was a turning point in the history of America. Had the French succeeded in holding the country, and in colonizing it with French, there never could have been such a country as the United States. The war benefited the English colonies in two ways. It not only opened the West for them, but it taught them to trust one another, to fight together side by side. From that time the growth of the idea of union among the colonies began. It resulted, twenty years later, in the achievement of independence.

18. **The Pontiac War.**—The ownership of the Ohio Valley, and the character of its settlement and civilization, were decided when the French gave up the struggle. But the Indians determined to hold the country for themselves, if possible. Under an energetic and able leader, named Pontiac, they formed a confederation of the majority of the tribes of western Canada, and of the region bounded on the south and west by the Ohio and Mississippi rivers. Rising in arms suddenly and without warning in 1763, they surprised many military posts and massacred the garrisons. Exposed settlements were broken up, particularly those between Pittsburg and Cumberland, and that on the Greenbrier River, where colonies had hastily established themselves at the close of the French war. At length General Bouquet, with an English army, defeated the Indians in a severe battle near Pittsburg, and soon afterwards compelled them to make peace.

CHAPTER IX.

THE DUNMORE WAR.

1. **Hostilities Renewed.**—In the year 1774 there was war again on the frontiers of Virginia and Pennsylvania. Murders, robberies, and retaliations, by the Indians and the settlers, early in the summer, caused a general alarm to spread throughout all the settlements west of the Alleghanies. Forts were built to which people fled for safety; but in many cases this precaution was not sufficient. Victims of savage butchery were numerous. The Indian known in history as Logan the Mingo, returned with thirty scalps from an expedition into the Monongahela Valley. A body of militia crossed into Ohio and burned an Indian village on the Muskingum River. This enraged the savages to a greater degree than before and they became more persistent in spreading destruction wherever their bands could penetrate. War raged along the whole frontier from western Pennsylvania to central Kentucky. The settlements were so widely scattered that the people could do little in the way of concentrating for mutual defense. Every cabin became a mark for savage attack.

2. **An Army of Invasion.**—Finding that the burning of a single town in the Indian country had not rendered the savages willing for peace, but rather the more aggressive, Governor Dunmore, of Virginia, prepared to march into their country with two thousand men, lay waste their towns, destroy their crops, and compel them to submit. Two armies, each of one thousand men, were equipped for the march by two routes. The Governor led the northern army from Cumberland to Pittsburg, thence down the Ohio to Wheeling

where a short halt was made. He then descended the Ohio to the mouth of the Little Kanawha, where he expected to find the other army which had marched by a different route. But not finding it, he passed farther down the Ohio, then set off through the wilderness toward the Scioto River where the Indian towns were situated. He sent scouts to the mouth of the Kanawha with an order for the other army to meet him on the Scioto River. His army did not encounter any Indians on its march, and attention will now be given to the other army which was more successful in finding the enemy.

3. **The March to Point Pleasant.**—The southern wing of the army was composed largely of men from Augusta County, with considerable accessions from the Watauga River, in North Carolina; from the South Branch, in Hampshire County; and from the settlements on the Greenbrier. An unusually large percentage of the men composing that army afterwards became famous as soldiers and statesmen. The future governors of four states were among the soldiers on that march. General Andrew Lewis was in command. The army marched across the Alleghanies, and at Lewisburg, Greenbrier County, went into camp to make final preparations for the advance to the Ohio. The distance from Lewisburg to Point Pleasant was one hundred and sixty miles. There was no road, only a trail through the woods. Supplies were carried on pack-horses. At the mouth of Elk River, the present site of Charleston, the soldiers made canoes from trunks of trees, and proceeded by water to the mouth of the Kanawha. They arrived at the Ohio early in October, and made their camp on the point of land enclosed on the one side by the Kanawha, and on the other by the Ohio. The agreeable location of the place caused it to be named Point Pleasant, a name which it yet retains.

4. **A Change of Plans.**—When the army reached Point Pleasant, dispatches from Governor Dunmore were found in a hollow tree where they had been deposited by scouts sent out

by him a few days before. These dispatches, as well as others which arrived later, ordered General Lewis to march at once to the Scioto River, and there join the other army. But the battle took place before the order could be carried out.

5. **The Indian Army Under Cornstalk.**—At that time the most influential chief among the Ohio Indians was Cornstalk, of the Shawnee tribe. By some means, never thoroughly understood, he had learned of the invasion of the Indian country, and, collecting an army of one thousand warriors, with all the guns and ammunition available, he set out upon the march to meet the invaders before they should cross the Ohio. His aim was to defeat the two Virginian armies in detail before they could unite. He undertook to crush General Lewis first, and led his red warriors to battle with a courage never surpassed. His plan of battle, and its execution, have often been admired. The generalship which he displayed was of a high order. In the whole course of Indian warfare in America, a better fought battle never took place. The Indians had no advantage in numbers or in ground, but they fought from sunrise till sunset against soldiers as good as America could furnish.

6. **The Battle of Point Pleasant.**—General Lewis with the main portion of his army reached Point Pleasant October 6. Colonel Christian brought up the supplies four days later. On the night before October 10, the Indian army crossed the Ohio and camped on the Virginia side, two miles above the American army. The next morning soon after daybreak two hunters discovered the enemy. One of the hunters was killed, the other escaped to camp and gave the alarm. Scarcely had he announced the tidings, when the Indian army put in its appearance, having followed close upon his heels, evidently in expectation of attacking by surprise. The battle began at once. Cornstalk had laid his plans, not only for defeating the Virginians, but for destroying them. With this object in view he had sent forces to occupy the west bank of the Ohio

LORD DUNMORE.

and the south bank of the Kanawha. He expected thus to cut off the retreat of the army, if it should undertake to escape from the narrow space of land at Point Pleasant. The Americans discovered the Indians on the opposite banks of the rivers, and, seeing retreat cut off in those quarters, they set to work and built fortifications behind which to take shelter in case they should be overpowered in front.

7. **Hand to Hand Canflict.**—The battle took place in a forest. The lines facing each other were about one mile in length, reaching from the Ohio across the point of land to the Kanawha. The combatants sheltered themselves behind trees and logs; they advanced or retreated; they took every advantage which the nature of the ground and their knowledge of forest warfare gave them. None of the fighting was at long range; much of it was hand to hand. The brunt of the battle was over early in the day when the enemy had found it impossible to rush the Virginian lines. The savages slowly gave ground for a short distance, then took up new positions behind trees and logs; and there they successfully resisted all attempts to dislodge them by direct attacks in front. Cornstalk was the lion of the fight. He moved back and forth from one end of the line of battle to the other encouraging his warriors to stand their ground. His powerful voice could be heard above the noise of conflict, exhorting his savages: "Be strong! Be strong!"

8. **The Indians Defeated.**—Late in the afternoon, under cover of a creek bank, General Lewis sent a force which attacked the Indians from the rear. That decided the battle, and the savages fled. The powerful voice of Cornstalk could rally them no more. They had stood their ground many hours, but when attacked in an unexpected quarter, and by an unknown force, they fled. At sunset they were crossing the Ohio, some on logs, some on rafts, some swimming. A log with a dozen Indians on it at starting, would often have none by the time it reached midstream. The loss of guns and

ammunition while crossing the river was considerable. The Virginians were near enough to witness the crossing, but were too far away to attack while their enemies were thus at a disadvantage. Consequently, the Indians succeeded in escaping from the battlefield which they, at morning, had hoped would be the scene of the destruction of the Virginian army before sunset.

9. **The Cost of Victory.**—The Indians left thirty-three dead in the woods. They were seen to throw other of their dead into the river. All of their wounded were carried off. The Virginians had sixty killed and ninety-six wounded. Among the dead was Colonel Charles Lewis, for whom Lewis County, West Virginia, was afterwards named. He was so careless as to go into the fight wearing a bright scarlet uniform. This made him a target for the Indians and he was struck soon after the battle began.

10. **The Indians Ask for Peace.**—After the battle Cornstalk, Red Eagle, and Logan retreated to the Scioto River with their tribesmen. Goyernor Dunmore was already near their towns with his army, and General Lewis was advancing from Point Pleasant. Seeing that pursuit was swift and vigorous, and seeing that the Indians had little hope of winning a battle, Cornstalk called a council of war. He asked the assembled chiefs and warriors what should be done. No one had any advice to offer. Cornstalk proposed that they kill all of their women, children, and old men, and then the warriors go out and fight till they were all dead. To this proposition those present made no response. "Then," said Cornstalk, "since you will not fight, I will go and make peace." He did so. A meeting with Lord Dunmore was arranged at Camp Charlotte, and the Indians agreed to terms of peace proposed by the conquerors. That closed the Dunmore war.

11. **The Governor Suspected of Treason.**—The war received its name from the Governor of Virginia. He was a Scotch-

man, who had formerly been Governor of New York, where he had been distinguished because of his greed for land and money. He grew rich by plundering others. He was a courageous man, but became very unpopular with the Virginians, who suspected him of treason against them. They believed that he was taking sides with England in the troubles then about to lead to the Revolutionary war. Many of the Virginians believed that he had a secret understanding with the Indians, and had sent the savages against the army under General Lewis, in hope of crushing it and thus weakening the Virginians in the conflict with England, about to commence. These charges against Dunmore have never been successfully proved. That he was friendly with England, there is no doubt. He made no secret of it. That he opposed the tendencies toward independence which he observed among the Virginians, is also equally certain. But that he plotted with the Indians for the destruction of the army under General Lewis, is doubtful. The Virginians hated him so thoroughly that they finally drove him out of the country.

12. **The Quebec Act.**—There is no doubt that the Government of Great Britain, foreseeing the war for independence, took measures for weakening the colonies. The Quebec Act, as it was called, was planned with that object in view. The Province of Quebec, in Canada, was enlarged, and was extended southward and westward, to include western Pennsylvania and all of England's possessions north and west of the Ohio River. This was an effort to rob Pennsylvania and Virginia of their western lands, and to annex them to Canada. It was a repetition of the tactics of the French, who, at an earlier date, had attempted to confine the English colonies east of the Alleghanies. England tried to do the same thing by extending the Canadian province southward, giving it Canadian laws, customs, religion, and people with French sentiments. The English Government understood that the carrying out of such a scheme would not strengthen Canada so

far as to render a movement for independence probable there, while it would so weaken the English colonies as to discourage the wish for independence already clearly discernable among the people. Canada was Catholic in religion, French in sentiment. The English colonies were Protestant. Great Britain attempted to array the one against the other; use one to threaten the other; cause one to fear the other; and thus compel both to lean upon the mother-country for strength and protection. But the Virginian army, when it pursued the Indians from Point Pleasant, invaded the Province of Quebec, assumed and exercised authority there, thus ignoring the Act by which Quebec had been extend to the Ohio River. The Revolution soon began, and the Americans restricted Quebec to its proper limits in Canada.

13. **Famous Speech Attributed to Logan.**—Among the documents preserved at the conference with the Indians at Camp Charlotte, was a written speech, purporting to have been delivered by Logan, the Mingo. Thomas Jefferson published it, and since then it has gained wide celebrity, and has been classed as the equal of the best speeches of the greatest orators. The language of the speech is as follows:

"I appeal to any white man to say if he ever entered Logan's cabin hungry and he gave him not meat; if ever he came cold and naked, and he clothed him not. During the course of the last long and bloody war, Logan remained idle in his cabin, an advocate of peace.* Such was my love for the whites that my countrymen pointed as they passed, and said, Logan is the friend of white men. I had even thought to have lived with you, but for the injuries of one man, Colonel Cresap, who last spring, in cold blood, and unprovoked, murdered all the relatives of Logan, not even sparing my women and children. There runs not a drop of my blood in the veins of any living creature. This called upon me for revenge. I have sought

* The French and Indian war was meant. The statement that he took no part in the war was not true. He was in one raid, at least, and committed depredations in Hampshire County.

it. I have killed many. I have fully glutted my revenge. For my country, I rejoice at the beams of peace. But do not harbor the thought that mine is the joy of fear. Logan never felt fear. He will not turn on his heel to save his life. Who is there to mourn for Logan? Not one."

It is now known that Logan was not the author of that speech. No one should have believed that an uneducated Indian could have used such classic language, and could quote, nearly word for word, passages from the Bible. The speech was written by Colonel John Gibson, in the absence of Logan. If it was written from any dictation by Logan, the dictation was interpreted by Simon Girty, a man who could neither read nor write, but who had lately seen the chief and had conversed with him.

CHAPTER X.

WEST VIRGINIA IN THE REVOLUTION.

1. **Great Britain Arms the Indians.**—The Dunmore war closed in the fall of 1774 and the Revolution began the next spring. During that war the present territory of West Virginia was not invaded by a British force, except one company of forty nearly a year after the surrender of Cornwallis. The State's remote position made it secure from attack from the east; but that very remoteness rendered it doubly liable to invasion from the west, where Great Britain had made allies of the Indians and had sent them against the frontiers, from Canada to Georgia, with full license to murder the helpless and the defenseless, as well as to wage war against those who were able to bear arms. The object which England had in employing Indians on the frontiers was to harrass the remote country. That would not only render it necessary that all the men of the settlements west of the mountains should stay at home for the defense of their families, but also that soldiers should be sent from the East to assist in repelling attacks upon the frontiers. Every soldier thus employed would be one less for the British to fight near the sea coast. Notwithstanding West Virginia's exposed position, on the west, it sent many soldiers to the Continental army. West Virginians were on almost every battlefield of the Revolution. That portion of our State east of the Alleghanies was not invaded by Indians during the Revolution. From that region large numbers of soldiers joined the armies of Washington, Gates, and other patriots. The history of our State during the Revolution

deals principally with the trouble with the Indians and has little to do with events that occurred farther east and north.

2. **Tories Plan Mischief.**—There were a few people in West Virginia, both east and west of the Alleghanies, who adhered to the cause of England. They were called Tories. Only twice during the war were they able to make trouble; once in the Monongahela Valley and once on the South Branch. Agents of Great Britain bribed citizens in the Monongahela Valley, and perhaps elsewhere, to oppose the movement for independence. So overwhelming was the sentiment in favor of the cause of liberty that the Tories enjoyed short careers. On the Monongahela they were arrested wherever found, and their leader was drowned in Cheat River while on the way to prison. The uprising in Hampshire County was much more serious. The Tories began their rebellion by refusing to pay taxes. Colonel Van Meter, with thirty men, proceeded to their headquarters, in the present county of Grant. He found them armed and in much greater strength than he had anticipated. Thinking it best to make no attack he returned to Romney. But when the Tories organized a company, elected John Claypole their captain, and prepared to march off and join the British, they drew down upon themselves a military force from the Valley of Virginia and were completely conquered.

3. **Invasions of West Virginia.**—During the Revolution the territory of what is now West Virginia was four times invaded by Indian forces large enough to be called armies. Three of these expeditions were directed against Wheeling, and one against the Kanawha Valley. At the beginning of the war with England both the Americans and the British attempted to obtain the good will of the savages. The Americans strove to keep them at peace; the English sought to direct their hostility against the frontier settlements. In the summer of 1775 the Americans sent James Wood and Simon Girty on a mission of peace to the Ohio tribes. About the same time Con-

gress created three Indian Departments and took measures to cultivate friendship with the savages. But the English, acting from Canada as a base, succeeded in enlisting the Indians on their side, and then armed them and distributed money and presents freely among them. White men, who could speak the Indian languages and whose characters were sufficiently bad, were paid regular salaries to live among the Indians and encourage them in their war against the patriots. Simon Girty found employment in that capacity after he turned traitor.

4. **The Shawnees Favor Peace.**—In the fall of 1775 some of the Ohio Indians visited Pittsburg and made a treaty of peace. They agreed to remain neutral during the war with England. The Shawnees took the leading part in this peace movement. That tribe had borne the brunt of the battle at Point Pleasant and had been the principal negotiator among the Indians in concluding the peace at Camp Charlotte. When war again began, the Shawnees, were inclined to remain neutral. The British found great difficulty in dragging them into the war. Cornstalk, their chief, was a true friend of the Americans and he held his tribe in check until his assassination two years later.

5. **The Bloody Year.**—In border history the year 1777 was known as "the bloody year of the three 7's." In that year the whole frontier was engaged in war with savages. Few settlements between the Alleghany Mountains and the Ohio River escaped a visit and its accompanying horrors. In that year occurred the first attack on Wheeling. Cornstalk was assassinated that year at Point Pleasant. There were two invasions of the Monongahela Valley; a raid into Tygart's Valley; and many lesser events which justly gave it the name of the bloody year.

6. **The Murder of Cornstalk.**—Early in that year Cornstalk found that he would be unable much longer to restrain the

young warriors of his tribe from taking part in the conflict. He visited Fort Randolph, at Point Pleasant, to warn the garrison of the new danger. The commandant of the fort thought it best to retain the chief as a hostage, hoping by that means to keep the Shawnees at peace. The venerable sachem was not unwilling to remain at the fort, and his sister and other Indians remained also. In the fall of that year a military expedition arrived at Point Pleasant from Greenbrier County, and from the counties further east. The troops were on their way to the Indian country. Cornstalk gave all the information he could regarding the routes and the rivers. One day while he was thus engaged one of the soldiers, who had crossed the Ohio to hunt, was killed by Indians lurking in the bushes. This so enraged the soldiers at the fort that they murdered Cornstalk, together with his son and another young Indian. The military expedition proceeded no further into the Indian country. The men who murdered Carnstalk were afterwards given the semblance of a trial in Virginia, and were acquitted. The Swawnees, no longer held in check by Cornstalk, joined in the war, and prompted by revenge, as well as by natural hatred, became inveterate enemies of the Americans. They were foremost in raids, the most tireless in pursuit, the least merciful when unfortunate prisoners fell into their hands, and they gave to the war a savagery which it probably would not have known had not the fierce Shawnees been prompted to revenge by the murder of their chief while on a friendly mission.

7. The Siege of Fort Henry.—In August, 1777, General Hand, at Pittsburg, ascertained from spies that Indians were collecting in large numbers for an attack upon some part of the frontier. He believed that Wheeling would be the point assailed. All the settlements between Pittsburg and Point Pleasant were warned of the danger. Scouts were sent across the Ohio to discover the advance of the Indian army. But, in spite of the efforts of the spies and scouts, no Indians were

seen. Suddenly, as if they had risen out of the earth, they appeared before Fort Henry at Wheeling on the morning of September 1. It was afterwards ascertained that they had approached in small bands and by unusual paths, assembling by prearrangement at a point near Wheeling, but on the Ohio side. After all had assembled, they crossed the river and advanced toward Fort Henry. The inhabitants of Wheeling and vicinity had assembled for safety and defense. There were forty men in the fort and twice as many women and children. The post was not manned by a regular garrison but depended for defense upon those who took shelter within its walls.

8. **Means of Defense.**—The fort had been named from Patrick Henry. It was built of logs planted on end firmly in the ground. Bastions were at the four corners, on which riflemen could stand to pick off the assailants. A cannon was afterwards placed on one of the bastions, but at the siege of 1777 there was only a wooden cannon which had been mounted to terrify the savages. They discovered that it was a dummy and it encouraged rather than discouraged them. The walls of the fort were too high to climb and too strong to break; and so long as the defenders could protect the gate from assault, and prevent the timbers from being set on fire, there was little danger.

9. **A Disastrous Ambuscade.**—The savages did not attack the fort openly at first. When they approached in the night of August 31 they set an ambuscade and waited for daylight. The plan succeeded too well. Early in the morning a few Indians showed themselves. Captain Mason with fourteen men went from the fort in pursuit. The Indians fled, and Captain Mason followed and fell into the trap. Only three of the fifteen men escaped. The firing was heard at the fort, and Captain Ogle with twelve men went to the rescue. He was decoyed into the same trap and nine of his men were killed. This left about a dozen men in the fort to resist the attack of

two hundred Indians. The savages were encouraged by their easy success and they moved forward without delay to assault the fort. They paraded with drum and fife, and the British flag flew over them. Their leader was a white man, whose identity has never been ascertained.

10. **The Simon Girty Myth.**—Many of the old frontier histories, as well as some of the modern ones, assert that the Indians at that siege were led by Simon Girty, an Irishman by descent, but born in Pennsylvania. This was a mistake. Girty had not joined the enemies of his country in 1777. He fled to the Indians in 1778, but never was present at any attack upon Fort Henry.

11. **Surrender of the Fort Demanded.**—In their advance against the fort the Indians made as much display of their force as possible. They took special pains to announce that it was Great Britain rather than the Indians that demanded the surrender of the place. England's protection was promised, in the name of Governor Hamilton, of Detroit, to all who would surrender; but those who would not surrender were threatened with massacre. The white man who was in command posted himself in the window of a neighboring cabin to demand the surrender of Wheeling. The reply to his demand was a shot fired at him from the fort.

12. **The Assault Upon the Gate.**—The Indians immediately rushed toward the gate to break it open. The men in the fort were expert riflemen and they picked off the Indians very rapidly. The assailants recoiled, but charged again and again; now trying to force the gate open, and now endeavoring to break down the wall with logs. Foiled at each attempt, they next tried to set the fort on fire. This was found no less dangerous to themselves and of no more effect than their other methods. The women in the fort fought as heroically as the men. During two days and nights every assault of the savages was handsomely repelled. They gave up the siege and

turned their attention to pillaging the surrounding settlement. They burned Wheeling, leaving only the fort, and killed horses, cattle, and other stock.

13. **Assistance Arrives.**—While the savages were destroying property Colonel Andrew Swearingen, with fourteen men, quietly approached by the river in a boat and reached the fort. Shortly afterwards Major Samuel McCullouch, with forty men whom he had collected from the neighboring settlements, succeeded in reaching the fort, except that McCullouch himself was cut off. He escaped by riding his horse down a very steep hill and galloped away. The Indians gave up all hope of success and took their departure, having lost about one-tenth of their number in the various attacks. No one in the fort was killed.

14. **The Grave Creek Ambuscade.**—In the summer of 1777 the Indian war became so severe that fears were entertained that the settlements along the Ohio could not defend themselves. Militia was sent from east of the Alleghanies to assist in the defense. Captain William Foreman, of Hampshire County, fell into an ambuscade at Grave Creek Narrows, a short distance below Wheeling, and was killed with twenty of his men.

15. **Fort Randolph Attacked.**—In the year 1778 the Indians contained the war upon the frontier. They made raids to the base of the Alleghanies. Nearly all the settlements west of the mountains were visited. The most important operation was the seige of Fort Randolph, and the attack on Donnally's Fort in Greenbrier County. Fort Randolph occupied the ground where the battle of Point Pleasant was fought four years before. It was more of a military post than a center for settlements. Two hundred Indians approached the place and set an ambuscade, as they had done at Wheeling. But the soldiers suspected the trick and would not go out to fight. Thereupon the savages threw off all disguises, and

openly came forward, their battle line extending from the Ohio across the point of land to the Kanawha. For one week they besieged the fort and tried to carry it by storm, but they were repulsed each time. Finding that strategems and force were alike in vain, they gave up the siege and turned their attention to what they supposed was a weaker fort. To put their new plans into execution, they moved off up the Kanawha River in the direction of the Greenbrier.

16. **Dangerous Work of Two Scouts.**—The commandant of Fort Randolph believed that the Indians were aiming a blow at the Greenbrier country. He knew that the result would be disasterous if the people were not warned of their danger. The distance to the Greenbrier was one hundred and sixty miles. To pass by the Indian army safely was an undertaking of great difficulty and danger. However, two soldiers volunteerd for the perilous enterprise. They dressed like Indians and were painted black by Cornstalk's sister, who still remained at the fort, notwithstanding the murder of her brother. The two scouts traveled day and night. They over took the Indians and succeeded in passing them on Meadow River, and a few hours later reached the Greenbrier settlements. The people received the warning barely in time to escape to places of safety. Donnally's Fort stood within two miles of the present village of Frankfort; and ten miles distant, at Lewisburg, stood another fort. Twenty men with their families took shelter at Donnally's, and five times that number assembled at Lewisburg.

17. **Daybreak Attack.**—The Indian army directed its march to Donnally's Fort, believing it to be weaker than the fort at Lewisburg. The army arrived in the night and hid near by to wait for morning. The inmates had prepared for the attack, having laid in water and provisions sufficient for the siege. Strict orders had been given that the door should not be opened in the morning until an examination had shown that no danger was near. Despite this precaution one of the

men opened the door in the morning and went to the yard for kindling wood. This man's indiscretion cost him his life and nearly caused the capture of the fort. No sooner had he gone into the yard than he was shot by the Indians, who sprang forward to the open door. A white man with a tomahawk killed the first Indian who thrust his head in at the door, while a negro fired into the faces of the savages with a musket loaded with shot. This checked the rush, and the door was closed. Some of the assailants crawled under the floor and attempted to raise the planks to effect an entrance. Others climbed the walls endeavoring to reach the roof. The discharge of guns had waked the men upstairs, who sprang from their beds and poured such a sever fire upon the Indians that they beat a hasty retreat, leaving seventeen of their number dead in the yard. The army withdrew out of range and the Indians contented themselves with firing from a safe distance.

18. **Reenforcements Arrive.**—As soon as the settlers about Lewisburg were safe in the fort, they sent out expert woodsmen to watch for the enemy. These scouts quickly ascertained that a fight was in progress at Donnally's, and they carried the news to Lewisburg. Sixty-six men hastened to the relief of the fort, and upon their approach the Indians fled. No large body of Indians ever again troubled the Greenbrier country.

19. **Last Raid Across the Alleghanies.**—Only once after 1864 did Indians raid across the Alleghanies in West Virginia. That was in 1782. Timothy Dorman, an Englishman, was the leader of the Indians on that occasion. They burned the fort on Buckhannon River, crossed into Randolph County where they killed one man and had one of their number killed, and proceeding over the Seneca Trail they reached the head of Seneca Creek in Pendleton County where they murdered a young lady named Gregg. The settlers drove them back to the west side of the mountain.

20. **The War Carried Into the Enemy's Country**—It was seen by the United States Government that the only effective manner of fighting the Indians was to carry the war into their own country. So long as they could make raids into the settlements, murder and pillage defenceless people, and then retire to their forest homes and be safe from pursuit and punishment, war would be only amusement for them. But when their own country was invaded, war with them became a serious affair. In 1779 General George Roger Clarke, with a small but excellent army, largely Virginians, penetrated as far as Illinois. He inflicted defeat after defeat upon the Indians and their British allies.

21. **Governor Hamilton a Prisoner.**—No sooner did Governor Hamilton, of Detroit, hear of Clarke's success than he set out from Canada to recover the lost ground and to carry the war into Kentucky. Hamilton even hoped to conquer western Virginia and capture Pittsburg. He took with him from Canada one hundred and fifty white soldiers and sixty Indians. He picked up other Indians on the way, and in December he reached Vincennes, Indiana, and captured the small gaarison which General Clarke had left at that place. It was then too late in the season to prosecute the campaign further, and Hamilton dismissed the Indians. He instructed them to assemble there early the next spring and promised them much plunder when they should march into Kentucky. But all of these high hopes were doomed. General Clarke, then in Illinois, marched in dead of winter, came upon Vincennes by surprise, captured the place, liberated one hundred white prisoners, seized military stores worth $50,000, cleared the whole country of British from Illinois to Detroit, and sent Governor Hamilton a prisoner to Richmond. This victory secured to the United States the country as far west as the Mississippi. It likewise greatly dampened the ardor of the Indians, who began to understand that the British were not able to protect them.

22. **General Brodhead's Expedition.**—In 1781 an expedition was sent against the Delaware Indians in Ohio. General Brodhead was in command. He crossed the Ohio at Wheeling with three hundred men, and with small loss on his part destroyed several towns and killed or captured thirty Indians.

23. **Indians Plan Attacks on Wheeling.**—In 1781 an Indian army marched against Wheeling, but for some reason, never clearly understood, did not make an attack. The next summer, in July, a British officer named Caldwell, with a few soldiers and three hundred Indians, accompanied by Simon Girty, moved toward Wheeling. But scarcely was the army in motion, when a report was spread (a false report) that General Clarke was invading the Indian country, and that General Irvine was marching from Pittsburg to invade Canada. The Indians dispersed to defend their homes. Thus the contemplated attack upon Wheeling in the summer of 1782 was thwarted. Some of the Indians, who had intended to march into West Virginia, invaded Kentucky and killed many people.

24. **The Last Siege of Fort Henry.**—In September, 1782, Wheeling was attacked for the last time, and it was the last battle of the Revolutionary war. Captain Bradt, an Englishman, led the attack. He had under his command forty irregular British soldiers and 238 Indians. Cornwallis had surrendered at Yorktown eleven months before, but the British in Canada and in the West continued to wage war. They armed the Indians, led them and assisted them. It was on West Virginia soil that the British flag was seen in battle for the last time in the United States during the Revolution. If the battle at Point Pleasant was the first battle of the Revolution, as has been claimed, then the first and last guns in the war for independence were fired on the bank of the Ohio within West Virginia.

25. **Immediate Surrender Demanded.**—Wheeling had little warning of danger. The people who lived in the vicinity had

barely time to repair to the fort. The Commandant, Captain Boggs, had gone off hurriedly to warn the neighborhood. The enemy arrived and demanded the immediate surrender of the place. The demand was refused. Instead of making an assault at once, the enemy remained out of rifle range till after dark. They had learned by experience that little was to be gained by rushes against the walls of stockades. This delay permitted the garrison to receive a small reenforcement. A boat from Pittsburg, loaded with cannon balls for the garrison at Louisville, was passing Wheeling when the Indians appeared, and the captain of the boat, seeing the danger, pulled his boat ashore. He and his men succeeded in entering the fort and they assisted in the defense. Before they arrived there were not twenty men in the fort.

26. Attempts to Burn the Fort.—The Indians placed their chief reliance upon fire. They knew that if the fort could be burned, the inmates must surrender. More than twenty times during the night the savages piled hemp against the palisades and set it on fire. The hemp was damp and the attempts failed. Next, assaults with logs were made upon the gate, but it resisted the shocks. Near the fort stood the cabin of Colonel Zane, which he and his family occupied and defended. His former home had been burned at the time of the attack in 1777, and when the Indians appeared again in 1782 he decided to save his house. The firing from it greatly annoyed the Indians. They resolved to burn it. Late at night one of them crawled stealthily toward the cabin with coals of fire, and when he arrived near the wall he began blowing the coals to make them blaze. Colonel Zane's slave was in the kitchen on duty, and a shot fired by him caused the savage to drop his coals and hobble howling away.

27. The Indians Experiment With Cannon.—A small cannon was mounted on one of the bastions where the assailants could see it. But they doubted its genuineness, because at the former attack on Wheeling a wooden cannon had been

mounted to make the Indians cautious. They had not forgotten it and they supposed that the same wooden gun was mounted again. They jeered, and challenged the garrison to fire it. About that time a party of savages took possession of an empty cabin near the fort, and going to the loft, they made night hideous with their leaps and yells. The cannon was trained on the cabin and the ball broke a joist, precipitating the howling Indians to the floor below and putting a stop to their revelry. The cannon was fired sixteen times during the attack. The Indians wanted artillery also, and they proceeded to make a cannon. They had taken possession of the cannon balls in the boat at the river's edge, and they improvised a siege gun from a hollow log, closely wrapped with chains from a neighboring blacksmith shop. They loaded their cannon, trained it adroitly upon the gate of the fort, and applied a coal to the powder. Their cannon exploded, the splinters wounding several of them. The fort was not harmed in the least.

28. **The Siege Abandoned.**—The Indians were thoroughly discouraged, and soon after, when Captain Boggs arrived and entered the fort with seventy men, they gave up hope. They retired; and turning their attention to Rice's fort, in the vicinity, they attacked it. But they lost four warriors and accomplished nothing. Thus ended the last formidable raid of Indians into West Virginia. During the attack on Fort Henry the white man who carried the British flag was shot and killed.

29. **Close of the Revolution.**—In 1783 the Revolutionary war came to a close. The Independence of the United States had been established; but disputes as to the boundaries continued for years. In the spring of 1783, while the British Parliament was discussing the terms of the proposed peace, Lord North insisted that the Americans should be shut out from the Great Lakes and that Canada should be extended to the Ohio River, under the provisions of the Quebec Act. More

than that was demanded. He declared that the Indian nation, the ally of Great Britain, should be guaranteed independence. The Americans would not agree to this proposition. Rather than be shut out from the Ohio Valley, they would have continued the war. They clearly saw that Lord North's proposition of independence for the Indians was nothing less than a scheme to hold the Ohio Valley for the benefit of England. It was believed that the Indians would ultimately disappear under the pressure of the superior race. Besides, there was no such thing as an Indian nation, in the sense intended by Lord North. There were tribes and confederacies, each in a measure independent of the others; but the different factions and tribes were incapable of uniting to form a nation. An attempt to exclude the white race from the Ohio Valley for the benefit of the Indians, would have been a crime against civilization. It is right, and is consistent with all the teachings of evolution, that the inferior races, which cannot or will not conform to the requirements of advancement and enlightenment, should give place to the superior races. The progress of the world is founded upon that principal. The injunction of the greatest Teacher, that the fruitless tree should be cut down and not longer cumber the ground, was an expression of the highest wisdom.

30. **The British Dismiss the Indians.**—In July, 1783, De Peyster, Governor of Canada, called the Indian chiefs together, and informed them that the war between Great Britain and the Americans was over. He then dismissed them. They were sour and disappointed, and reluctantly gave up further fighting. They had hopes that the British would continue to occupy the forts in Ohio and Indiana, and supply them with guns, clothes, and money as before. In this they were not entirely disappointed. Some of the forts were held more than ten years by the British who hoped to hold them indefinitely. They even believed that ultimately they could possess the country. Late in the summer, after

the treaty of peace had been signed; the Americans sent Baron Steuben to Canada to demand that the forts on American soil should be evacuated. To this demand the Govenror of Canada replied that he had received no orders to give up the forts.

31. **Why the British Held the Forts.**—When the order was given by the British Government to its forces to evacuate New York, in the autumn of 1783, Lord North, acting (for an excuse) upon a petition from the merchants and fur traders of Canada, withheld the order for giving up the military posts about the lakes. Two years later these places were still in possession of the British. When pressed for answer as to why they held these posts, the reply was that some of the States had not opened their courts to British creditors for the collection of debts.

32. **War in the Northwest.**—The Indians became restless, and a war of four years followed. All of the fighting, except incursions by small parties, was beyond the borders of West Virginia. Two of the armies which the United States sent against the Indians were defeated; but in 1794 General Wayne routed them at the battle of Fallen Timbers, on the Maumee River, and brought to a final close all trouble with Indians, so far as West Virginia was concerned. The last murder by the Indians within our State occurred in Barbour County in 1795, not twenty-five miles distant from the scene of their first murder in West Virginia in 1754. The people on our frontier had fought the savages for forty-one years, with brief intervals of peace, and had finally driven them beyond the Ohio, never to return.

33. **A Period of Peace.**—The danger from savages being past, people turned their attention to the development of the State. Twenty years of peace followed before war again disturbed the remote hills and valleys of western Viginia. In 1790 the population of the territory now embraced in West

Virginia was 55,873. In 1800 it had increased to 78,592, and in 1810 it was 105,469. This increase was not as rapid as it would have been had not the country beyond the Ohio been thrown open to settlers. The stream of homeseekers passed West Virginia by and made their way to Ohio and Kentucky, where excellent land was cheap and abundant, and where other opportunities were at least equal to those to be enjoyed at that time in western Virginia. In 1790 our territory was divided among only nine counties, four east of the Alleghanies, Hampshire, Berkeley, Hardy, and Pendleton; and five west, Randolph, Harrison, Monongalia, Greenbrier, and Ohio. During the next ten years four new counties were formed, Kanawha, Brooke, Wood, and Monroe. Between 1800 and 1810 three more were added, Jefferson, Mason, and Cabell.

34. **The War of 1812.**—The War of 1812 brought no invasion of West Virginia's territory. The battles between the soldiers of the United States and the armies of Great Britain were fought in Canada, or on the Great Lakes, or in the East, or the far south. Although the people of West Virginia had no invasion to fear, they did not hesitate to take part in the war. Soldiers from the South Branch, from the Upper Potomac, from the Monongahela Valley, from the Greenbrier, from the Kanawha, and from the bank of the Ohio, were upon almost every battlefield of the war. West Virginia furnished its full share of the five hundred thousand troops which the United States raised between 1812 and 1815; and the soldiers from West Virginia had no superiors and few equals, whether they fought in the wilds of western Canada, or defended the sea coast cities, or held the fort with Jackson at New Orleans.

35. **Patriotism of the West Virginians.**—In time of trouble the United States never called for soldiers without receiving a prompt response from West Virginians. They bore their part in the Revolution, in the War of 1812, in the Mexican war, in

the Civil war, in the war with Spain, and in the Philippine war. In the second war with Great Britain, that of 1812, the contrast in patriotism between the strong New England States and the backwoodsmen of western Virginia was remarkable. New England gave volunteers grudgingly, or not at all, and tried to hinder and embarrass the Government in the prosecution of the war. The West Virginians volunteered, not by ones or twos, but by whole companies.

CHAPTER XI.

THE NEW STATE MOVEMENT.

1. **The Transalleghany State.**—Even before the Declaration of Independence many schemes were on foot for the formation of new provinces west of the Alleghany Mountains. Large and influential companies were engaged in the movements, such as the Ohio Company, the Walpole Company, and the Indiana Company. Washington, Franklin, and many men of prominence, both in the mother country and in the colonies, were identified in the movements.

2. **Province of Vandalia.**—The colony of Vandalia was proposed, and had received the approval of the King and the Board of Trade and Plantations (1775), when further proceeding were suspended on account of the outbreak of hostilities. Vandalia included nearly all of West Virginia as far east as the western boundary of Maryland, and extended southwestward to a line drawn from the mouth of the Scioto to the Cumberland Gap. Point Pleasant was to be the capital.

3. **State of Westsylvania.**—After the Declaration of Independence and prior to 1780 a movement was set on foot for the formation of a "Sister Colony and the fourteenth Province of the American Confederacy," west of the Alleghanies, under the name of "Westsylvania." The boundaries were identical with those of Vandalia, with a part of Maryland and a section of Pennsylvania extending as far east as Altoona and northward to the line established by the Treaty of Fort Stanwix (1768) about fifty miles north of Pittsburg, added. A memorial

was presented to the Continental Congress, under the caption of "The Memorial of the Inhabitants West of the Alleghany Mountains." It alleges that 25,000 families had settled in the region since 1768, and that they were separated from the rest of Pennsylvania and Virginia "by a vast, extensive & almost impassable Tract of Mountains by nature itself formed as a Boundary between this country and those below it."

4. **Origin of the New State Idea.**—The notion of a new state had been set going in the minds of the people between the Alleghany Mountains and the Ohio River; it took deep hold upon them; and was never abandoned in the region south of the Mason and Dixon line until a new state was carved out on the western slope of the mountains.

5. **A Mingling of Elements Resulting in Individualism.**—The settlement of the western slope of the Alleghanies was effected by types of men somewhat "different from the planters of the South and the merchants and seamen of the New England coast." The Germans of the Palatinate were found all along the frontier. The ever persistent Scotch-Irish element entered the forest, cleared his fields, built his cabin, constructed a stockade at some point of vantage, and held his ground at the price of his blood. To these were added the elements of migration from the older colonies—from Virginia, Maryland, Delaware, New Jersey, Pennsylvania, New York, and New England—already partly divested of their "Old World characteristics." A fusion of these elements in the new environments rapidly developed a new character distinctively individual in his qualities. Social distinctions were broken down; economic equality prevailed; and the result was a large degree of individualism, which meant the development of a tendency toward political equality.

6. **Causes of the Desire for Separation.**—Popular opinion assigns the immediate cause of the formation of West Virginia first, to the loyalty of the people to the Union, and second, to their inherent antagonism to the institution of slavery.

Loyalty to the Union was a potent factor, but no well formed sentiment existed in opposition to the institution of slavery. The number of slaves held was indeed small, and they were chiefly used as household and farm servants. Slavery never obtained a firm foothold in West Virginia for the same reason that it never flourished in New England and Pennsylvania—it was not economically profitable. The causes of the desire for separation are therefore deeper seated.

7. **Physical Separation of the Virginias.**—The States of Virginia and West Virginia are geographically distinct. West Virginia lies almost entirely on the western slope of the Alleghanies. Nature placed it in the valley of the Ohio, not in the Tidewater region. Nearly all of its streams flow into the Ohio. Not a single avenue of commerce, since transportation by packhorses and packsaddles was abondoned, led into or through Virginia until the building of the Chesapeake and Ohio Railway long after the Civil War. Its available commercial connections were south and west with Cincinnati, Columbus, Chicago, and the Gulf of Mexico; north with Pittsburg and the region of the Great Lakes; east with Baltimore and Philadelphia. In order that three-fourths of the people of Western Virginia might reach the region of the capital (Richmond), it was necessary to flank the impassible barrier of the Alleghanies and pass through Maryland and the District of Columbia; and in so doing one must avail oneself of the transportation afforded by the enterprise of the Baltimore and Ohio Railroad, built by a foreign corporation, for which the naked right of way, across the northwest section of the State, was reluctantly granted by the General Assembly of Virginia, after years of petitioning on the part of the inhabitants of the region through which the road passed. In a letter published in 1866 Waitman T. Willey, then a Senator from West Virginia, says: "Who carries anything from west of the Alleghanies to eastern Virginia to sell? Who brings anything from East Virginia to West Virginia to sell? There are and

have been almost literally no business and no intercourse between the two sections for twenty-five years, excepting what was connected with matters of revenue and legislation at Richmond. There is no State in the Union, which has been admitted ten years ago, of which the people of East Virginia know less than they do of West Virginia; and, excepting the capital of the State, the people of West Virginia are equally unfamiliar with East Virginia."

8. **Political, Social, and Economic Separation.**—Social, political, and economic differences, like an entering wedge driven deeper and deeper, had been progressively forcing the sections wider and wider apart. The habits and feeling, the education and customs, of the people of the two sections, were radically different. In the West personal industry was honorable, and, when accompanied by intelligence, it enhanced the respectability of the man. He was not excluded from society because he was a laborer. In the East the occupation of manual labor, no matter how skilful and intelligent the laborer might be, excluded him from polite circles. The organization of society, doubtless, rather than the deliberate choice of the people, made his social ostracism inexorably necessary. Let Judge Benjamin Watkins Leigh, the leader of the aristocracy on the floor of the Constitutional Convention of 1829; speak for them. Hear his opinion of the influence to be exerted by the free, intelligent, white laborers of the West. His words penetrated like a barbed point into the minds of self-respecting men west of the mountains. "What real share," said he, "so far as mind is concerned, does any man suppose the peasantry of the West—that peasantry which it must have when the country is completely filled up with day-laborers as ours is with slaves—can, or will take in affairs of state?" The historian of the Convention calls him "the chivalrous and accomplished champion of the eastern aristocracy." But this champion was met by Philip Doddridge, a new knight that came out of the West, and with his lance of argument,

PHILIP DODDRIDGE.

tipped with the point of the keenest logic, overthrew the theories respecting a basis of representation, brought forward in the interest of the eastern slaveholder. Randolph, Tazewell, Upshur, Green, could not measure lances with him in argument, but they could outvote him; and they did it.

9. **Different Ideas of Taxation and Representation.**—The most radical and irreconcilable differences grew out of the questions of taxation and representation. The Constitutional Convention of 1829 marks the beginning of a long struggle for the redress of these grievances. There were three distinct bases of representation advocated by different members in this Convention: the freeman's right to vote, with representation apportioned upon the basis of the white population, was advocated by the western members, and was called the "white basis;" the Tidewater district insisted upon a property qualification to vote, with representation apportioned upon the free white population, with three-fifths of the slaves added, which went by the name of the "black basis;" and still another section endorsed the "mixed basis," the central idea of which was that population and taxation combined should form the basis of apportionment of representatives. Every demand of the West was ignored in the Convention of 1829. The West never forgave the East for the wrongs done by the Constitution of 1829. The enlargement of the right of suffrage granted by the Constitution of 1850 came too late to atone for the past. Every county in what is now West Virginia, except Hampshire and Jefferson, gave a majority against the Constitution of 1829, and every county east of the Blue Ridge, except one, a majority for it. The real movement for a new State dates from this time.

At the breaking out of the war all the negro slaves of eastern Virginia under twelve years of age, were exempt from taxation, "while every pig and colt and calf of the western Virginian was taxed to its utmost value. Slaves over twelve years of age were taxed at the average nominal value of $300

each, while the real average value was upward of $600 each." The western white man was taxed to pay for negro slaves executed for crime. In 1850 the right to vote had indeed been given by the Constitution to every white male citizen of the Commonwealth, of the age of twenty-one years, who had been a resident of the State for two years, but representation was still based upon property and population in a way that placed the control of the legislative power in the hands of the wealthy minority; for at this time the white inhabitants west of the Blue Ridge outnumbered those east of it by upwards 90,000, "and yet the basis of representation was so adjusted as to give the minority east of the ridge control of the Legislature." *

10. **Fidelity of the West Virginians.**—Why were the statesmen of eastern Virginia unwilling to concede these political reforms to the western Virginians? Judge Leigh sounded the keynote: the population of western Virginia could never be in harmony with the exclusive society of the East. The immediate excuse was a pretended fear that the West, once in control of legislative power, would attack the institution of slavery. The real fear was that the revenues of the Commonwealth would be diverted from the East to the West for the development of the latter. They could not justly doubt the fidelity of the western Virginians to the established institutions of the State. They had been subjected to the severest tests. "When the British in the War 1812 were carrying off their negroes and pillaging their property, the wealth of the East did not hesitate to cry to us for help, and with the echo of their call, coming back from over the mountains, was mingled the roll of the western drum on their own Capitol Square. With such alacrity did we fly to their rescue, and our true men stood where their own had not dared to stand alone, on their own shores, between them and the foe; and many a brave fellow from the hills fell in defense of their

* W. T. Willey. A Letter on the Reintegration of Virginia. The freest use has been made of the statement of facts contained in this letter.

firesides."* It is said that sometimes half the men in a company of soldiers had never been permitted to vote, because they did not own property enough.

11. **Sectional Distribution of Offices.**—The West was discriminated against politically. Prior to 1850 but one man, Joseph Johnson, of Harrison County, had been elected Governor from the region west of the Alleghanies, and no one from that section had ever sat in the United States Senate; only one Senator had ever been chosen from west of the Blue Ridge.

12. **Distribution of Internal Improvements.**—A great bonded debt aggregating upwards of $30,000,000 expended for works of internal improvement, had been created, not more than one-tenth, possibly not one-fifteenth, of which had been expended within the present territory of West Virginia. Again let Senator Willey's able paper speak: "Let me ask you to cast your eye over the map of Virginia prior to its division and see where her works of internal improvement are located—her railways, canals, or any other character of improvement of extent and dignity sufficient to claim title to a state work. Where are they? All east of the Alleghany Mountains; all within the limits of the old State. There you will find all the railroads; the Petersburg and Norfolk railroad; the Petersburg and Weldon; the Richmond and Petersburg; the York River; the Richmond, Fredericksburg, and Potomac; the Orange and Alexandria; the Virginia Central; the Manassas Gap; the Richmond and Danville; The Virginia and Tennessee; the Petersburg and Lynchburg, and others not necessary to mention; forming a perfect network of railways all over the old State. There too are the canals, the James River, Dismal Swamp, &c., the former of which has been like an inveterate cancer on the revenues of the Commonwealth for so many years. Now, what railways or canals, built on state account, do you find in West Virginia? Not one. We have not a foot

* Willey, ib.

of completed railway or canal built on state account within our borders." Yet during the period from 1822 to 1861 the counties embraced in West Virginia had paid into the Treasury of Virginia, in excess of their just proportion of the expenses of government, nearly $4,000,000. The people of the West held the East responsible for the impoverished and undeveloped condition of their section. To remain with the Old Dominion would leave their incalculable mineral, agricultural, and manufacturing resources to slumber indefinitely in the valleys, hills, and mountains. They would remain as they had been before, "the hewers of wood and the drawers of water" to the aristocracy of the East. Such were the aspects, whether just or not, in which the western Virginian regarded the East. The antagonisms between the sections were as immovable as the mountain barrier that separated them, so long as they remained in the same municipality.

13. **Secession of the East the Opportunity of the West.**—The Ordinance of Secession was the rock upon which Virginia was broken in twain. The territory which ought to have become a state at the time Kentucky was admitted into the Union, seized the opportunity to sever the political ties which bound it to the Old Dominion.

14. **On the Way Toward Secession.**—John Letcher, the Governor of Virginia, convened the General Assembly in extraordinary session on January 7, 1861. It passed an act calling a convention of delegates of the people, which met on February 13, 1861. It was the first time in the history of the State that a convention had been called without the question of calling it having been first submitted to the people for their sanction. But a grave crisis was at hand, and events were transpiring rapidly. South Carolina, Georgia, and Mississippi had passed Ordinances of Secession; their Commissioners were knocking at the door of the Virginia Convention. They were admitted; they harangued the Convention; they flattered the state pride of Virginia; they entreated the old Commonwealth

to join them. The fatal god of the Virginian was state pride, and the appeal was not in vain. The Committee on Federal Relations brought in a report. One of the most spirited debates known to modern times followed. The Convention was made up of two elements, one that favored Secession, and the other that favored maintaining the integrity of the Union. A substitute in the nature of an Ordinance of Secession was offered for the sixth resolution proposed by the committee. The debates waxed fiercer. Waitman T. Willey employed his matchless eloquence in opposition to the amendment. The venerable General John J. Jackson, who had served in the field before his cousin Stonewall Jackson was born, who had held important trusts under the Government, who had been on General Andrew Jackson's staff, and who had fought in the Seminole war, "urged the Convention to pause on the brink of the abyss before taking the leap." Among the other aggressive leaders on this side may be noted Judge George W. Summers of Kanawha, Chester D. Hubbard of Ohio, and James C. McGrew of Preston, in a time and place where every man who stood for the Union must be a hero. At first the Union sentiment seemed dominant. The Committee on Federal Relations contained sixteen members who professed loyalty to the Union, and five who favored radical action. The minority was led by former Governor Henry A. Wise. But the word Union did not mean the same to all the members of the majority.* At length on April 6, 1861, a vote was reached on the proposed amendments. It was defeated by a vote of 89 to 45. The Unionists for the time being had triumphed; but their victory was short lived. The Peace Conference at Washington had failed; the commissioners appointed by Vir-

* The Unionists were derided as "submissionists" by the Secessionists throughout the Commonwealth, and the state of feeling among the last element was very well illustrated by a satire which was published at the time in the Richmond *Examiner*, under the title of the "Parliament of Beasts." The writer, a civil engineer named Lorraine, cleverly caricatured the various delegates, comparing them to different animals, who were represented as rendering homage to King Abe, the chief of the orang-outangs. See Barton H. Wise's The Life of Henry A. Wise of Virginia, pp. 271-272.

ginia had effected nothing; South Carolina on April 12 had opened fire on Fort Sumter; Lincoln had called for volunteers to invade and coerce the South. It meant war. The excitement in Richmond was intense. Virginia must be the battlefield. Federal forces must invade the State. Many Virginians loyal to their own idea of the Union—a Union of Sovereign States—faltered when it came to the point of conceding the right of the Federal Government to coerce a State. The President's call for troops left no doubt of the attitude of the Government at Washington. The Secessionists seized the critical moment to carry Virginia into the arms of the Confederacy. A mysterious meeting of citizens and strangers assembled and sat behind closed doors. Bonfires and illuminations blazed in the public places. A mob tore down the flag on the capitol. Passion had smothered the voice of reason. The Convention added to the excitement by going into secret session.

It is not within the scope of this work to give an extended relation of these times and events. But the scenes here enacted have no parallel in the history of our own country. The plans of the Secessionists were deep, systematic, and well laid. A single incident will suffice for the purposes of this narrative.

15. **Former Governor Wise as a Tragedian.**—Wise in company with others had formed a secret plan to seize the government property at Harper's Ferry and Norfolk, and had dispatched state troops to these points for the purpose without the knowledge of Governor Letcher. On the morning of April 17 he arose in his place and, dramatically taking his watch from his pocket, reminded his hearers "that armed forces are now marching upon Harper's Ferry .. .. and there will be a fight or a footrace before the sun sets this day." The convention was startled at the boldness of the movement. Able men from the East as well as the West were on their

feet denouncing the act. But Wise had prepared himself for the last scene of a great tragedy. He silenced Judge Baldwin by informing him that the soldiers were his own constitutents from Augusta County. The wildest scenes followed. Judge John Critcher has described Wise as he made his great speech which was intended to carry the resolution for the Ordinance of Secession. "It was plainly premeditated. Before he arose I noticed his suppressed agitation. Ex-President Tyler, who knew what was coming, turned his chair about ten feet in front of Wise, with his back to the President of the Convention. As Wise proceeded with his arraignment of Summers (of Kanawha) Mr. Tyler lost control of his feelings, and tears trickled freely down his cheeks. The speaker was supernaturally excited. His features were as sharp and rigid as bronze. His hair stood off from his head as if charged with electricity. Summers sat on the left of the Chair, white and pale as the wall near him." Old John Janney, of Loudoun County, President of the Convention, with the tears running down his cheeks, and a voice choking with emotion, pleaded in vain with the Convention not to sever the tie which bound Virginia to the Federal Government.

16. **Ordinance of Secession Passed.**—Amid such scenes, which beggar description, a vote was once more reached on an Ordinance of Secession. It stood 88 for to 55 against. Wise had planned with success.

17. **Conduct of the Western Members.**—Of the forty-six members from the counties now in West Virginia, nine voted for the Ordinance, seven were absent, one was excused, and twenty-nine voted against it. The Ordinance was referred to the people for ratification or rejection at the regular election to be held on May 23, 1861. Some of the delegates from the western counties declared they would not abide by the action of the Convention. Amid the roar of Richmond run mad they began to consult among themselves as to the course to be pursued. Some of them quietly, others secretly, left Richmond;

HENRY A. WISE.

and others who desired to go were compelled to get passes from the Governor, for Virginia was already arming and preparing for war.

18. **Final Acts of the Convention.**—The Convention remained in Session. Most of the members signed the Ordinance of Secession except the small number of western delegates that withdrew. It passed another ordinance ratifying the Constitution of the Confederacy, provided the Ordinance of Secession was ratified. An ordinance was also adopted releasing all officers of the State from the obligation of their oaths to support the United States.

19. **Ratification of the Ordinance.**—May 23 came, and with it much excitement; but the election passed off without any serious disturbances in the northwestern counties. A majority in the State was in favor of the ratification of the Ordinance. The East carried it by storm; but the counties now in West Virginia cast about 40,000 votes against it to 4,000 for it. In some of the counties the ratio against it was 22 to 1; the average was 10 to 1. There was no mistaking the sentiment of the sections: Virginia, as it exists at present, stood by the Confederacy; West Virginia, by the Union.

20. **Opposition in the West.**—Even before the assembling of the Legislature in January, 1861, public meetings had been held in some of the counties, which had given expression to sentiments of loyalty to the Union. Preston County held a meeting on November 12, 1860; Harrison County on the 26 of the same month; two days later the people of Monongalia assembled to discuss the situation and take measures; a similar gathering took place in Taylor County on December 4, and one in Wheeling ten days later; and on the 7 of January, 1861, there was a meeting in Mason County. On the very day on which the Ordinance of Secession was passed, and of course without their knowledge, the people of Monongalia assembled in mass meeting in Morgantown, and resolved that

western Virginia would remain in the Union. In case of the adoption of the Ordinance of Secession a division of the State was suggested. Similar meetings were held, and similar sentiments uttered in Brooke, Wetzel, Taylor, Wood, Jackson, Mason, Berkeley, and elsewhere, at later dates.

21. **Mass Meeting at Clarksburg.**—But the movement to nullify the Ordinance of Secession then pending a vote of the people, took definite shape at a meeting held at Clarksburg on April 22, 1861, which was attended by about twelve hundred men. John S. Carlile, late a delegate to the Richmond Convention, was the moving spirit. A preamble was adopted which recited the occurrences to the present time, and a resolution provided for the bold step of a general convention of "five delegates of the wisest, best, and discreetest men" from each county, to meet in Wheeling on May 13, 1861, "to consider and determine upon such action as the people of northwestern Virginia should take in the present fearful emergency."

22. **The May Convention at Wheeling (1861.)**—Twenty-six counties responded to this call by sending as their representatives men whose names have become household words in West Virginia. Hampshire and Berkeley east of the mountains sent delegates. At this time the Ordinance of Secession was awaiting the ratification or rejection of the voters on May 23. But the faction in control of the machinery of the state government at Richmond had given unmistakable evidence that the eastern part of the State was "a unit in favor of resisting invasion by the Federal Government." In order to coerce the States that had already seceded it would be necessary for the Federal troops to cross Virginia. Therefore Virginia resisted coercion. The representatives at Wheeling were fully aware of the real attitude of the eastern people. But for the present their main purpose was to protest against the ratification of the Ordinance of Secession. But if it carried?

Then the majority of the members looked forward to the formation of a new State. But how?

23. **Dissentions Over Methods.**—The meeting soon split into two factions on this question. John S. Carlile boldly proclaimed that the time for forming a new State was at hand. He introduced a resolution with the object of taking measures to form a new State at once. Delegations marched with banners displayed, on which was inscribed, "*New Virginia, Now or Never.*" Carlile was a strong leader, and he was still smarting under his experiences in Richmond. "He raised his deep and resonant voice to the highest pitch of revolutionary fervor." He outlined his plan in brief: adopt a constitution at once; form a government for the counties represented; fill the offices with temporary appointments. The plan was popular; it was dangerous to oppose it; fervor was carried to such a pitch that opposition to the plan was characterized as disloyalty. The plan was revolution pure and simple, without justification at the time. There was a minority of cool heads that recognized the irreparable injury that would ensue to the cause of the new State by the adoption of a course so revolutionary. It would doubtless defeat the object all had in view. The equable temperament of Willey fitted him for the leadership of the conservatives. He emphasized the distinction between "spasmodic disruption" and authorized separation. In the formation of a new State the provisions of the Federal Constitution must be observed. Up to this time the acts of Virginia were all conditioned upon the casting of a majority vote in favor of the Ordinance of Secession, and any step looking to the division of the State, or a reorganization of the government of Virginia before the election (May 23) would be premature. The radicals turned upon Willey. They said he had always been inactive and his Unionism was doubtful. Two days were consumed in fierce and bitter debates; but in the face of the approaching crisis the voice of reason began to make itself heard, and better feeling prevailed. It became

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apparent that without harmony nothing could be accomplished; and the spirit of passion grew calmer.

24. **Final Concert of Action.**—Campbell Tarr of Brooke County, Chairman of the Committee on State and Federal Relations, brought in a report, which was a skilful blending of all opinions. It set forth that the Ordinance of Secession was void; that the schedule to it prohibiting certain elections was usurpation; that the alliance entered into with the commissioners of the Confederate States was unconstitutional; that the acts of executive officers of the State, under that alliance, was subversive of the liberties of the people; that it be urged upon all citizens to vote against the Ordinance of Secession; that they would maintain and defend the Constitution of the United States; that if the Ordinance of Secession should be ratified by the people, the counties there represented, and all others disposed to cooperate, be recommended to meet on the eleventh of the same month. The report was adopted with but two dissenting votes. A central committee of five, with Carlile as chairman, was appointed to carry out the objects of the Convention and to assemble the body at any time it might think necessary. Good feeling was restored; elequent speeches were made; a prayer was offered; a blessing was invoked; the Star Spangled Banner was sung by a thousand voice, three cheers were given for the Union, and in a fever-heat of enthusiasm the Covention adjourned to await the action of the voters of the whole State at the polls on May 23. It was a fearless earnest body of patriots. Every shade of former political opinion and associations was there represented; but it excited no inquiry or comment. The distinction between Democrats and Whigs and Republicans were forgotten.

25. **The Second Wheeling Convention.**—May 23, 1861, was the regular biennial election in Virginia, at which, among other officers, members or the Legislature were to be chosen, and

the Ordinance of Secession was to be voted on. The first Wheeling Convention had resolved that the members of the Legislature so elected should be entitled to seats in the next convention, if called. The Ordinance was ratified, if a majority of votes in the State could ratify it. The counties so disposed thereupon proceeded on June 4 to elect their delegates to the new Convention. This body met on June 11 at Washington Hall in Wheeling, "to devise such measures as the safety and welfare of the people they represented should demand." Arthur I. Boreman of Wood, was unanimously chosen President, and G. L. Cranmer of Ohio, Secretary. "The Committee on Credentials reported delegates from thirty-one counties..... This number was subsequently augmented to thirty-five counties, producing an aggregate of seventy-seven members."* Four counties in what is now Virginia were represented, namely, Accomac and Northampton on the Eastern Shore, and Fairfax and Alexandria on the Potomac near Washington; but the delegate from Loudoun was not received, because of the insufficiency of his credentials.

26. A Declaration of the People of Virginia.—The representatives of the people assembled in this Convention regarded the Act of the General Assemby of Virginia, calling the Convention which assembled in Richmond on February 13, 1861, as invalid, because the Legislature did not possess the authority to call *any* convention without first having received authority from the people to do so. The Ordinance of Secession was therefore without authority, null, and void. They maintained that upon usurpation, abandonment, or abdication of the functions of government in a republic, by the elected officials, the temporary authority delegated to them reverts to the people, and that therefore it was the duty of the people, assembled in Convention by their delegates, to erect a government. But before proceeding to carry out this duty, on June

* J. M. Hagans, Sketch of the Erection and Formation of the State of West Virginia, prefixed to W. Va. Reports, v. I., by order of the Court.

rison, and Waitman T. Willey of Monongalia, were elected to fill the vacancies in the United States Senate caused by the resignations of R. M. T. Hunter and James Mason. Their credentials were received, and they were admitted as members of the Senate of the United States representing the State of Virginia. William G. Brown of Preston, Jacob B. Blair of Wood, and Kellian V. Whaley of Kanawha, had been elected as members of the House of Representatives from the three western districts of Virginia at the regular election on May 23. They proceeded at once to Washington and took their seats in Congress. The machinery of the State government had been reorganized and set going in complete working order in accordance with the well settled principles of law. That reorganized government was recognized and accredited by the Executive and Legislative Departments of the Federal Government and later it was to receive the solemn sanction of the Judicial Department pronounced in due course of law, from which there is no appeal.

29. **Reassembling of the Convention.**—On reassembling in August a number of ordinances were passed, but the members of the Convention felt that they had but one primary duty to perform, namely, provide for the erection of a new State west of the Alleghanies, composed of a people whose interest were compatible. Men were not wanting in that body who foresaw that the triumph of the Union meant the return of Virginia to her former position in the Union. Without the new State it meant the indefinite continuance of all the grievances of which the West had complained for half a century. They therefore set about their work with a relentless determination to achieve the result desired. But under the Federal Constitution two steps were indespensably necessary to the erection of a new State within the jurisdiction of another State: (1) the consent of the State concerned, and (2) the consent of the Congress.

30 **Ordinance Providing for a New State.**—The Convention adopted an ordinance defining the boundaries of the proposed State, if it should be formed; designated the counties to be included; provided a poll to be taken to ascertain whether the qualified voters within the boundary proposed desired a new State; authorized the election of delegates to a Constitutional Convention, in case a majority voted in favor of the new State; and ordained that in case the vote was favorable, a Constitution should be framed and submitted to a vote of the people, and, if ratified, the vote upon the question of a new State, as well as upon the proposed Constitution, together with a copy thereof, should be laid before the Legislature at its next session for the action of that body. All this was preliminary to the consent of the Legislature to the formation of the proposed State. Other ordinances necessary to put into complete operation the reorganized government of Virginia were adopted, and the Convention, on August 21, 1861, adjourned. Its sessions had been entirely harmonious. The spirit of rancor displayed in the May Convention had disappeared.

31. **The Constitutional Convention.**—At the election which occurred on the fourth Thursday in October, 1861, the new State received 18,408 votes to 781 against it. At the same time delegates were elected to the Constitutional Convention, which met in the Federal courtroom at Wheeling on November 26, 1861. Delegates appeared from forty-one counties, being all then formed within the present limits of West Virginia, except Berkeley, Calhoun, Greenbrier, Jefferson, Monroe, Morgan, Pendleton, and Pocahontas,* which were at the time practically under the control of the Confederate forces. The Constitution framed differed radically, in some respects, from the organic law of Virginia. †

* Grant, Lincoln, Mineral, Mingo, and Summers were formed after the admission of West Virginia into the Union.

† See Part II of this work.

32. **Sentiment in Regard to Slavery.**—The one serious difference that arose in the Convention was over a proposed provision relating to the gradual abolition of slavery. Gordon Battelle, a Delegate from Ohio County, offered a series of propositions on the subject, which became known as the "Battelle Resolutions." They excited an earnest but peaceable debate. There were only 12,771 colored persons in the portion of the State proposed to be included in West Virginia, in 1860. There had been a decrease of ten per cent in the number of slaves in the decade from 1850 to 1860. It was generally admitted that natural causes were at work, which, in a few years, would extinguish slavery in the new State without the aid of human laws. The resolution for emancipation was opposed by many on the ground that it would cause an unnecessary agitation of a question that would in course of time solve itself; and it was defeated by a majority of one vote.

33. **The Constitution Ratified.**—The Constitution was finally completed, and was submitted to a vote of the people on April 3, 1862. It received 18,862 votes for ratification to 514 for rejection.

34. **Consent of the Virginia Legislature.**—The Legislature of Virginia assembled on May 6, and seven days later passed an act giving the consent of that State to the formation and erection of West Virginia, in accordance with the requirements of the Federal Constitution.* The forms of law had all been complied with. Would the Congress now admit the State?

35. **Memorial to the Congress for Admission.**—The memorial requesting the admission of the State, together with the Constitution adopted by the people thereof, and the act of the Legislature of Virginia giving consent to the erection of the

*The same act provided that Berkeley, Jefferson, and Frederick counties might be included, if the voters of those counties gave their consent and ratified the Constitution of the new State.

State, was laid before the Senate by Senator Willey on May 29, 1862.

36. The Carlile Bill.—Senator Carlile, a member of the Committee on Territories, was expected to prepare the bill for the admission of the State. A month went by before he did so. When the bill was finally presented, it included thirteen counties now in Virginia, to the inclusion of which the consent of the Legislature had not been given. The bill provided for a constitutional convention; the adoption of a provision making free the children of slaves born after 1863; a new vote by the people; and a new act of consent by the Legislature. The counties which he had added from Virginia, would oppose the emancipation clause; they would not appoint delegates to a new constitutional convention; they would not ratify the constitution when submitted to them. In short, they were strong enough in votes and sentiment to defeat the new state. Carlile had led the radical movement in the May Convention, which proposed to form a new State at once, as an act of revolution, without any attempt to comply with the requirements of the Federal Constitution. It was apparent now that he was opposed to the new State and was doing all in his power to kill it. Why this change of front? It has never been satisfactorily explained to the public. Carlile offered excuses; but his excuses do not explain this inconsistent conduct. When his actions became known at home, great indignation prevailed. The Legislature asked him to resign. He refused. Charles Sumner opposed the bill because it did not contain a provision absolutely abolishing slavery. The original draft contained the following provision with respect to slavery: "No slave shall be bought, or free person of color be permitted to come, into the State for permanent residence."

37. The Willey Amendment.—In July Senator Willey submitted an amendment to Carlile's bill, which was in effect a new bill offered as a substitute. It omitted the counties in

Virginia east of the Alleghanies and contained a clause for the gradual extinction of slavery, upon the adoption of which as a part of the Constitution the State was to be admitted. The amendment was in these words: "The children of slaves born within the limits of this State after the fourth day of July, eighteen hundred and sixty-three, shall be free; and all slaves within this State who shall, at the time aforesaid, be under the age of ten years, shall be free when they arrive at the age of twenty-one years; and all slaves over ten and under twenty-one years shall be free when they arrive at the age of twenty-five years; and no slave shall be permitted to come into the State for permanent residence therein." The amendment killed Carlile's bill; but he stubbornly opposed the new State to the end. The debates show many conflicting views upon the question of admitting the State, some of which sound strange at this day in the light of subsequent events.*

38. **Passage of the Bill.** The bill passed the Senate by a vote of 23 to 17. In the meantime, and prior to the submission of the Willey Amendment, William G. Brown of Kingwood had offered a bill in the House for the admission of the State, meeting the objections which had threatened to defeat the measure in the Senate. The Willey Amendment contained the essential features of the bill offered by Mr. Brown, and, when the measure was passed in the Senate, the House bill was dropped. The Senate bill was not called up in the House until the Congress met again in December after the summer adjournment, when it was passed, after much opposition, by a vote of 96 to 55. The President called for the opinion of his Cabinet in writing, touching the constitutionality and expediency of the act. Only six members were present in the city. Seward, Chase, and Stanton approved the bill; Wells, Blair, and Bates disapproved it. Lincoln has left his own

* An excellent summary of the views expressed may be found in Blaine's Twenty Years of Congress. Ch. XXI.

opinion in writing: "Without braving absurd conclusions we cannot deny that the body which consents to the admission of West Virginia is the Legislature of Virginia."* The West Virginians at the Capital were very anxious to learn whether the President had signed the bill. He had not done so at a late hour in the evening of December 31, which was the last day upon which the President might act. Jacob Beeson Blair, the member from the Parkersburg district, called at the White House on New Year Day, and was shown the bill with the familiar signature of "A Lincoln" attached. The President is quoted as having said afterwards that a telegram he received from Archie W. Campbell, editor of the Wheeling *Intelligencer*, largely influenced him in signing the bill.

39. **The President's Proclamation of Admission.**—The admission of the State was subject to a condition: the people must ratify the amendment proposed in the act for the gradual extinction of slavery. Fortunately the Convention which framed the constitution, as if anticipating some emergency, had adjourned subject to the call of its chairman. It was reassembled, the amendment was adopted, and submitted to the people, by whom it was ratified. In accordance with the act of Congress the result of this action was certified to the President of the United States by the President of the Convention, and on April 20, 1863, President Lincoln issued his proclamation, that at the expiration of sixty days from the date of the proclamation the act admitting the State would be in effect. Accordingly on the 20 day of June, 1863, West Virginia became the thirty-fifth State in the Union.

40 **The Reorganized Government of Alexandria and Richmond.**—On May 23, 1863, Governor Pierpont, who had theretofore held the office of Governor of Virginia under the Restored Government by virtue of election by the Wheeling Convention, was elected Governor by a vote of the people for

*John Nicolay and John Hay's Abraham Lincoln. A History V. II., p. 285

the term of three years beginning January 1, 1864. Upon the organization of the new State the records and archives pertaining to the Old Dominion were removed to Alexandria on the Potomac opposite Washington, and within the Federal lines. After the subtraction of West Virginia only four counties were left which had been represented in the Reorganized Government, namely, Accomac and Northampton on the Eastern Shore, and Fairfax and Alexandria just opposite Washington. In May, 1865, the seat of government of the Reorganized Government was again removed from Alexandria to Richmond, after which the organization that had given its adherence to the Confederate States Government ceased to exist, and the authority of the Pierpont government was recognized by the Congress and by the President as the legitimate government of Virginia, and was accepted as such throughout the Commonwealth. Pierpont continued in office until 1868, when he was succeeded by Henry H. Wells.

41. **Constitutionality of the Act.**—The question is often asked, Was the admission of West Virginia constitutional? Its answer depends upon the answer to another question, was the Reorganized Government formed at Wheeling the legitimate government of Virginia? Prior to the formation of West Virginia two rival authorities, each with a Governor and other officers, and a Legislature, simultaneously exercised the powers of a state government within the territorial limits of Virginia; the one was at Richmond, and the other was at Wheeling. John Letcher was Governor at Richmond; Francis H. Pierpont at Wheeling. The government at Richmond exercised control over about two-thirds of the area of the State; it was supported by a preponderance of the wealth, power, and people of the State; it disavowed any allegiance to the Government at Washington, which claimed to be the legitimate Government of the whole United States; it acknowledged allegiance to the Confederate States of America, which were at war with the Government at Washington; it had no

representation in the Congress at Washington, and did not desire to have any; it promulgated an act purporting to release the officials from their oaths taken to support the Constitution of the United States; it claimed to be the government of *all* Virginia. The government at Wheeling exercised jurisdiction over less than one-third of the area of Virginia; it represented a minority of the wealth, power, and population of the State; it acknowledged allegiance to the Government at Washington; it repudiated the Confederate States of America; it was acknowledged as legitimate by the Government at Washington, by the admission of Senators elected by its Legislature, by the admission of its Representatives in the House, and in many other respects; its Senators, Carlile and Willey, were elected to fill vacancies caused by the resignation of Hunter and Mason; its three members in the House were elected from the three western districts of Virginia at the regular election held under the laws of Virginia on May 23, 1861; vacancies in its executive, legislative, and judicial offices were filled in the same way in which those vacancies would have been filled, had there been no secession and no war; its legislature was composed largely of members of both Houses regularly elected at the May election, 1861, together with a number of hold-over Senators elected in 1859, about whose right to sit in the Virginia Legislature no question would have been raised but for the war; it also claimed to be the government of *all* Virginia. Was either of these organizations in point of law the government of Virginia? If so, which one? And who, or what authority, shall decide the fact? John Randolph Tucker, in his commentary on the Constitution of the United States, says: "When there are rival governments and the demand is made by either or both (for recognition) it has been decided .. .. that when the application is made the President may have the authority to decide which is the legitimate government." President Lincoln recognized the Reorganized Government at Wheeling as the legitimate government of all

Virginia. The Congress recognized it in many ways, and gave it the real seal of its sanction by the admission of West Virginia, which was the real test of its legal authority. The Supreme Judiciary in time recognized it when the question was raised in the suit brought by the State of Virginia against West Virginia to recover jurisdiction over Berkeley and Jefferson counties. So whatever finespun constitutional theories may have prevailed in the past or may be advanced in the future, the fact remains that in the erection and admission of West Virginia the forms of law in such cases prescribed by the Federal Constitution were strictly observed, and the act has received the official sanction of every department of the Federal Government. To dispute the fact now is but to quarrel with fate. If it be true that the act was accomplished by the invention of a legal fiction, its binding force is none the less potent on that account; for the whole history of the administration of justice under English law, from time immemorial, is crowded with instances of the invention of legal fictions in order to attain the ends of justice. West Virginia asked no more than justice, and was unwilling to take less: "indeed got only what was equitably due, and what she was entitled to claim by the natural right of self-government."

42. **Present Conditions.**—The attainment of what West ginians conceived to be their natural and political rights removed the cause of all estrangements that had ever existed between the sections east and west of the mountains. It fell to the lot of Virginia to suffer the horrors and penalties of a war, which her ablest statesmen would gladly have avoided, had it been possible from their point of view. But Virginia was caught between two compelling forces, and yielded to the pressure of the South. The end of that conflict left her territory practically identical with that of the old Colony, which embraced the region of the Tidewater and the Valley, between the Chesapeake and the Alleghanies. The last quarter of a century has brought its possibilities in the progressive devel-

opment of the whole country. Virginia is moving forward in the march with new hopes and new aspirations; and in this the New Year of the beginning of the twentieth century West Virginians present the compliments of the century and wish Virginians the happy return of the centuries to come.

CHAPTER XII.

THE CIVIL WAR.

1. **The North and the South.**—In 1861 the final struggle for supremacy began between the North and the South. For many years there had been more or less controversy; and as time passed, the feeling between the two sections of country grew more bitter. This feeling had manifested itself in the newspapers, in political debates, in books, in lectures, and in every way by which the people expressed their beliefs or their principles. It was not so much a division along political lines, as a geographical division. It was not faction against faction, or party against party; but one section of the country was arrayed against another section. It was the North against the South, and the South against the North. It was the slaveholder against the opponent of slavery. Viewed from any and from every standpoint; examined with prejudice or without prejudice; considered in its political aspect, or as an historical question; still the causes leading to the great Civil War are found to spring from and to rest upon the question of geography. Had slavery been profitable in the cold climate of the North, and unprofitable in the warm South, the people of the North would probably have been slaveholders and the southern people would have opposed the institution. The labor of slaves was not remunerative in the northern part of the United States; but in the South the case was different. From this fact grew the difference of sentiment, and sentiment developed into prejudice and passion and anger. Anger obeys no law but force, and force was called upon to settle the long-standing controversy.

2. **The Spread of Slavery.**—When States began to be formed from the new territory west of the Mississippi, the people of the North undertook to exclude slavery. The southern people endeavored to legalize slavery within the new States then being formed. Partisan feeling ran so high that civil war seemed imminent in the West long before it began in the South. Politicians devised and formulated compromises which proved inadequate to allay the mistrust or cool the anger on either side. In the South many people believed and openly proclaimed that there could be no permanent peace so long as the North and the South were under one government. In the southern States the doctrine became popular that any State had a right to withdraw from the Union when it pleased. The doctrine was not new; neither was it peculiar to the South. During the war of 1812 a party proclaiming the right of secession appeared in New England and developed considerable strength. But when the troubles leading to the Civil War came on, the advocates of secession were nearly all found in the slave States.

3. **The Election of Lincoln.**—The presidential election of 1860 was a contest in which rival powers of the South and of the North strove for supremacy. Abraham Lincoln was elected. The South viewed the result with alarm, and claimed that the institution of slavery was in danger, because the newly elected President was known to be opposed to it. The danger was more imaginary than real; but the people of several southern States were so firmly convinced that they would suffer loss in political power, as well as loss of property, if they remained in the Union, that they called conventions and passed ordinances of secession; and uniting in a compact, they set up a government of their own, styling it the Confederate States of America. This was the commencement of the Civil War. President Lincoln took steps to enforce the Federal authority in some of the States which had seceded, and force was met with force. He called for 75,000 volunteer soldiers to uphold the Government's authority in the South; and

Jefferson Davis, who had been elected President of the Confederate States, called out 35,000 volunteers to meet the invading armies from the North. By June 1, 1861, eleven States were in rebellion against the authority of the United States. They were Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Tennessee, Arkansas, Louisiana and Texas.

4. **Comparison of Strength.**—The population of the North was three times that of the South, and in wealth the proportion was about the same. The statesmen in the South realized that in numbers the odds were against them; but they counted upon ultimate victory; for they did not believe that the North was in earnest. They also affected to believe that, man for man, the southern soldier was far superior to those from the northern States. They still further counted upon their cotton as a power, and they boasted that "Cotton was King." They believed that European countries would not permit the supply of cotton to be cut off, and that the United States would be compelled to fight those countries, if it blockaded southern ports and prevented the exportation of that valuable article of commerce. But the war proved that cotton was not king: steel was king. The North's machinery and factories gave it a strength which the South, an agricultural country, could not successfully resist.

5. **An Extensive Subject.**—The Civil War is a subject too extensive for general treatment in a state history. So wide was the field of operations, and so numerous were the actors and actions, that those who wish general information along that line should seek it in books devoted to that subject alone. Suffice it to say that after four years of war the North was victorious, slavery was abolished, and the great questions which had so long disturbed the country were settled by force of arms. West Virginia was a very small factor in that gigantic struggle; but, in proportion to their wealth and their numbers, the people of this State did as much as those of any

other State. The leading events in the war, so far as they took place within West Virginia, or immediately concerned it, will be set forth in the following pages.

6. **The John Brown Raid.**—In the year 1859 John Brown with a few followers attempted to excite a revolt among the slaves of Virginia. He was a native of Connecticut, but had been a resident of Kansas, and had taken an active part in the troubles growing out of the slavery question in that State. He was an Abolitionist and believed that slavery should be stamped out by the best means available for that purpose. He had made the freeing of the slaves the ruling motive of his life. He was a brave man, but his judgment was not clear; at any rate he miscalculated the effects which his bold stroke would produce, and underestimated the strength of the opposition which he would meet. He believed that the slaves would rise, and free themselves if he would give them a word of encouragement and show them the way. In this he was mistaken. They showed no inclination to rebel or to make trouble. Brown hoped that there would be little or no bloodshed. His plan was for the negroes to march with such arms as they could lay their hands on, and reach the free States of the North; but he expected them to use whatever force might be necessary to accomplish that end. He provided guns, pistols, and spears with which to arm the slaves. In this violent procedure Brown did not represent the general sentiment of the North, where a very great majority of the people were firm supporters of law and order, and were not in sympathy with revolutionary methods.

7. **Harper's Ferry as a Rallying Point.**—Brown chose Harper's Ferry as the rallying point for his forces, and as the place where the first blow should be struck. He rented a farm in the vicinity, and he there accumulated arms in considerable quantities. These were shipped to him from some point in the North; but whence they came, and by whom shipped, never was ascertained to a certainty. The muni-

tions of war included 200 Sharpe's rifles, 950 spears, a small cannon, and 40,000 cartridges. Brown had twenty-one men with him, sixteen white and five negroes. Thirteen of the men had seen service in the border warfare in Kansas. Several were under twenty-one years of age. John B. Floyd, at that time Secretary of War, had received, a short time before, an anonymous letter from Cleveland, Ohio, telling of Brown's plans, but no attention was paid to the warning. On Sunday night, October 16, 1859, the blow was struck. Nineteen men took active part and three remained at the farm, four miles distant, to guard the arms and ammunition. Brown was well acquainted with the contents of the United States arsenal at Harper's Ferry, and knew that a single watchman remained on duty at night. He believed that if he secured the contents of the arsenal and of the rifle works near by, and carried them into the mountains, proclaiming at the same time that the slaves should be free, the slaves would rally to his standard and the movement would spread till every slave in the Republic would be liberated. He even provided against the contingency of the overthrow of the United States Government, and had prepared a constitution for a new government to be set up in its stead.

8. **The Arsenal Captured.**—At 10 o'clock at night Brown told off his men by twos, and assigned special work for each couple. The sentinel at the railroad bridge was captured. The door of the armory was broken down, and the single watchman was taken prisoner. A passenger train on its way from the west toward Baltimore was held up. A negro porter at the depot was killed. Early in the morning two citizens, venturing upon the street, were shot. The telegraph wire was cut. Brown collected forty unarmed prisoners during the night, and confined them in the buildings which he had captured.

9. **The Alarm.**—The boldness of the movement startled the country. The news was slow in reaching the outside world,

and the very meagerness of the details increased the alarm. The people in the South, not knowing the particulars, believed that an army of Abolitionists had captured Harper's Ferry and was about to incite a general insurrection of slaves. The citizens of the town took up their guns and drove Brown's men into the engine house where they barricaded themselves and fired through portholes cut in the walls. A shot from a porthole killed the mayor of the town; and in revenge, the citizens killed one of Brown's men whom they had taken prisoner. During this time Brown wore the sword which Frederick the Great had presented to General Washington. The sword had been taken the night before from a relative of Washington who had inherited it, and who lived near Harper's Ferry.

10. **Arrival of Troops.**—Militia from the surrounding country arrived at Harper's Ferry on Monday. Later in the day a company of United States marines came up from Washington, and with them came Colonel (afterwards General) R. E. Lee, and Lieutenant (afterwards General) J. E. B. Stuart, both famous Confederate generals in the Civil War which commenced soon after. A demand for unconditional surrender was made upon Brown, with which he refused to comply. No assault was made upon the building that night through fear of injuring the prisoners whom Brown was holding. The next morning the demand was repeated and was again refused. The assault was then made. Twelve marines, armed with sledge hammers, and twelve, carrying a heavy ladder, broke down the door, and rushed in. A desperate hand to hand fight followed, but it was of short duration. Brown was wounded, and all of his men who had remained with him were killed or captured. Several had taken advantage of the tumult, before the final assault, and had made their escape. Some of them were subsequently captured and executed.

11. **Brown's Trial and Execution.**—When Brown saw that his plans had failed, that his forces were prisoners, fugitives,

or dead, and that certain death awaited him, if not from wounds already received, then upon the gallows, his courage did not fail him. He asked for no mercy, and did not plead for his life, except to say that he did not think he deserved death for his attempt to succor the oppressed. He was tried in the court at Charlestown, Jefferson County, was found guilty, and was sentenced to be hanged on December 2, 1859. He died on that day, and his body was taken to Elba, New York, for burial. Six of the men who were with Brown in the Harper's Ferry raid were also hanged.

12. **The Result.**—In point of time John Brown's attempt at freeing the slaves preceeded the Civil War; yet it was so closely connected with the causes leading to the war, that it is not improper to regard it as the opening of the conflict which began soon after. The South grew more hostile toward the North, claiming that Brown's attempt had proved that the purpose of the northern people was to free the slaves by force. From that time the determination of the South to meet force with force, or to anticipate by striking first, became more apparent. The opening scenes of the Civil War showed it more clearly.

13. **Government Property Seized.**—The United States owns property in nearly all the States, having acquired it by reservation, purchase, or gift. This property consists of public buildings, dockyards, forts, arsenals, and lands and improvements required for carrying on the business of the Government. It has never been the policy of the United States to use its property for the purpose of making money or to hold it for speculation; but it has acquired it for special purposes, and uses only so much as it needs. At the outbreak of the Civil War the southern States, when they withdrew from the Union, proceeded to take possession of the United States property within their borders. In some cases those in charge surrendered without a fight or a protest when the demand was made; others yielded only to force. Within a short time after

the inauguration of Lincoln, and before hostilities had begun, nearly all of the Government property in the South had fallen into the hands of those who were antagonizing the authority of the United States. Much of it had been seized before Lincoln became President. In his inaugural address he announced his purpose of occupying and holding the government property. The people of the South heard this with pretended astonishment, and they answered that such a step would be the signal for war. President Lincoln did not hesitate to make his promise good, and the southern people prepared to resist.

14. **Bombardment of Fort Sumter.**—The crisis came very soon. In April, 1861, the Government undertook to send supplies to the garrison of Fort Sumter, at Charleston, South Carolina. The Confederates erected batteries commanding the fort, demanded its surrender, and upon being refused, they opened fire upon it. After a bombardment of seventy hours the fort surrendered. Virginia had not yet seceded from the Union. Her people were hesitating, were halting between two opinions. Those in the eastern part, where slaves were numerous and profitable, were anxious to join the Confederacy. But sentiment in the western part of the State was opposed to that course. A convention assembled in Richmond to discuss the matter, but no conclusion had been reached when the bombardment of Fort Sumter began.

15. **Virginia Takes Sides.**—The excitement which attended the opening act of the war was intense. The advocates of disunion rallied their forces at Richmond and passed the Ordinance of Secession. It was sent to the people for ratification or rejection at the polls. The people of what is now West Virginia voted ten to one against secession; but the majority in the eastern part of the State was sufficient to overcome the vote west of the Alleghanies, and eastern Virginia went with the South, and cast its fortunes with the Confederacy. The step was one of profound importance, and the consequences to Virginia were serious. Her soil became

the chief battlefield of the war; and no other State, either in the North or in the South, suffered so much as she. Her industries were ruined, her wealth was wasted, her people perished in their devotion to her cause; and when the conflict was over, she had lost very much and had gained nothing.

16. **Contest for West Virginia.**—The sentiment of the West Virginians was well understood. They were not friendly to secession, and were not in accord with the action which Virginia, as a State, had taken. The authorities at Richmond understood the situation, except that they underestimated the resistance which would be offered by the West Virginians when the attempt should be made to deliver them over, part and parcel, to the Confederacy. After the bombardment of Fort Sumter, and before any other engagement of importance had occurred, the Richmond government sent officers and soldiers across the Alleghanies for the double purpose of recruiting soldiers for the South, and of defending the State if invaded by armies from Pennsylvania or Ohio. Forces were dispatched into the Kanawha Valley, and into the valley of the Monongahela. They were coldly received by the people. Colonel George A. Porterfield was able to collect a force of only one thousand men in the whole northern part of West Virginia; and so few were the arms furnished them by the Richmond authorities that these troops were sent against the enemy with no adequate means of offense or defense. Colonel Porterfield concentrated his troops at Grafton, and was ordered to advance to Wheeling. Before he had time to make an advance, he found it necessary to fall back before a superior force advancing from Wheeling under command of Colonel Benjamin F. Kelley. The troops under Colonel Kelley were the vanguard of the Union army which was then moving toward West Virginia from Ohio and Indiana.

17. **Destruction of Property Ordered.**—Governor Letcher, of Virginia, ordered Colonel Porterfield, while at Grafton, to destroy the railroad at Cheat River and blow up the tunnel

through Laurel Hill, west of Rowlesburg, to prevent the use of the road for the transportation of Union troops between the East and the West. The officer whom Colonel Porterfield sent to execute the order failed to reach the objective point, and the railroad was quickly in the hands of the Federal forces. It was held by them, west of the Alleghanies, during the whole war, with the exception of about one week in 1863. It gave them great advantage in the transportation of troops between the East and the West. The United States forces could move from the Ohio River to Harper's Ferry in one day; but the Confederates had no railroad, and they were obliged to march overland, and transport their supplies across the mountains by slow and uncertain wagon trains.

18. **General McClellan Crosses the Ohio.**—President Lincoln placed General George B. McClellan in command of twenty thousand troops, volunteers from Ohio and Indiana. He was given no orders to cross the Ohio River and invade Virginia; but acting without orders, he crossed the river at Parkersburg, and a portion of his army crossed at Wheeling. Four thousand Union troops reached Grafton June 1, 1861. The Confederates under Colonel Porterfield had fallen back to Philippi, twenty miles south of Grafton, and had there halted, with a view of resisting the further advance of the Federal army. They were in no way prepared for battle, owing to the neglect, or inability, of the Richmond government to supply them with arms. Colonel Porterfield threw out pickets to guard the roads leading from Grafton; but late at night, on June 2, a heavy rain came up, and the Confederate pickets left their posts without orders, and without their commander's knowledge, and returned to shelter at Philippi. No sentinels were left to give notice of the approach of Union troops.

19. **"The Philippi Races."**—Early in the evening of June 2, three thousand Federal troops left Grafton, and marched by two routes upon Philippi, timing the advance of the two columns so as to arrive before the town at four o'clock on the

morning of June 3. The heavy storms during the night delayed the march, but the enthusiasm of the soldiers enabled them to arrive within fifteen minutes of the appointed time. The last five miles, over dark and muddy roads, was made by the foot soldiers in an hour and a quarter. At the first streak of dawn the Federal cannon opened fire from the neighboring hills upon the Confederate camp in Philippi—the first inland fight of the war. The surprise was complete. The Confederates were stampeded, and in their precipitate retreat they abandoned more than half of the few and worthless guns which they possessed, and all of their tents and baggage. So narrow was their escape that a delay of ten minutes would have cut off their retreat on the Beverly road and caused the capture of the whole regiment. The rapid advance of the Union troops and the still more rapid retreat of the Confederates caused the affair to be called "The Philippi Races."

20. **The Result.**—In comparison with battles which occurred later in the war, the skirmish at Philippi was of small importance. But it was the first encounter between the opposing forces in the contest for Virginia's territory west of the Alleghanies, and this added an interest to the affair. At Philippi the Union forces gained their first victory in the first considerable invasion of the territory of the southern States by troops from the North; and the immediate results were by no means unimportant. The Baltimore and Ohio railroad was placed beyond danger of falling into Confederate hands. The people of northwestern Virginia were encourged in their loyalty to the Union, by seeing that help from the powerful North and West was able and willing to come to their assistance. The element which was inclined to favor Virginia in its act of secession was given time to pause and consider before taking up arms for the Confederacy. For these reasons the skirmish at Philippi was of importance very much beyond many encounters where larger forces were engaged

and where the death lists were larger. There were not a dozen soldiers wounded at Philippi, and none were killed.

21. **Reenforcements sent Across the Mountains.**—The authorities at Richmond heard with alarm and disappointment that the northwestern part of the State was rapidly falling into the hands of the Federal forces. Colonel Porterfield retreated from Philippi to Huttonsville in Randolph County, forty miles south, and halted at the base of Cheat Mountain. His forces were so few and were so poorly armed and equipped that resistance to the advance of the large army which General McClellan was pouring into West Virginia could not be undertaken with probability of success. He was blamed by those in power at Richmond for not making a stand, and soon after his retreat from Philippi he was superseded in command by General Robert S. Garnett, who was expected to hold the Union forces in check and to recover the lost ground in West Virginia. Garnett had been an officer in the United States army, but had resigned to accept service under the Confederacy. Early in July he had been reenforced by troops from eastern Virginia until he had six thousand men under him, exclusive of a few companies of local militia who were expected to scout and do picket duty. He hoped to prevent the Federal forces from advancing further, and he formed plans to capture the Baltimore and Ohio railroad and either hold it or destroy it. His design was to establish a base at Evansville in Preston County, from which he could strike in different directions; and in case of being overpowered in front, or threatened from the west, he intended to retreat up Cheat River. His engineers surveyed the wagon road from Rowlesburg to St. George with that object in view. General Lee wrote as late as July 1, urging that the railroad be cut at Rowlesburg, saying that the rupture of the railroad at that place would be worth an army to the Confederacy. General Garnett soon satisfied himself that he could not push forward to the railroad with the force at his disposal; and instead of

improving the Cheat River road for his own use, as he had contemplated, he blockaded it to prevent its use by General McClellan who might get on the Confederate flank by that route. Garnett wrote to Lee that he did not believe the Union forces would advance south of Philippi, for the simple reason that they probably had as much of Northwestern Virginia as they wanted. Lee replied that the Federal forces would not be satisfied with what they already held, but would push over the mountains to Staunton unless prevented from doing so. Events proved that Lee's judgment was right.

22. **Garnett Fortifies His Position.**—Early in July, 1861, Garnett had about six thousand Confederate troops under his command in Randolph County. He fortified two positions to prevent the Union forces from moving south. A fort was constructed at the western base of Rich Mountain, on the Staunton and Parkersburg turnpike, between Beverly and Buckhannon. The other fortified position was on the road between Beverly and Philippi, just over the line in Barbour County. The Union forces would need to follow one or the other of those roads in moving southward. The stronger force of Confederates was placed on the road leading from Philippi because that was the direct route to the South. The two fortified Confederate positions were twelve miles apart, but no road connected them, except in a round-about way.

23. **Advance of the Union Forces.**—General McClellan had no intention of sitting down quietly where he was and leaving the Confederates fortified in his front. He had no plans further than that he would attack Garnett and defeat him, if possible. After that should be accomplished he had not decided what he would do; nor had he received any orders. It was a campaign, from the Union standpoint, that looked only to the immediate future. But if McClellan was given no orders for an advance, neither was he handicapped by orders forbidding his doing what he pleased. Early in July he set his army in motion, employing about fourteen thou-

sand men, and leaving six thousand as guards and reserves at Clarksburg, Webster, Grafton, Rowlesburg and at other points. He advanced in two columns against the Confederates, designing to attack both positions at once. Four thousand men, under General Thomas A. Morris, marched from Philippi against the force under Garnett in person fourteen miles beyond on the road to Beverly; and ten thousand men, under McClellan, marched by way of Buckhannon to attack the Confederates at Rich Mountain.

24. **The Confederates Defeated.**—On July 11 an attack was made on the Confederates at Rich Mountain, and after a sharp fight, the Union troops gained a victory. The Confederate force at that place was destroyed, less than four hundred escaping. When news reached Garnett at the other camp, he abandoned his position without a fight and retreated eastward into Tucker County, hoping to escape by that route. He blockaded the road behind him by felling trees across it, to hinder pursuit; but General Morris followed with three thousand men, cutting out the blockades, and pressing so hard upon the rear of the retreating army that Garnett was obliged to offer battle at Corrick's Ford, in Tucker County. The Confederates were defeated and Garnett was killed. The remnant of the army fled, abandoned its baggage, threw away guns, left the sick to fall into the hands of the pursuing Union troops, and after crossing into Maryland and back again into Virginia, finally crossed the Alleghanies into Hardy County and thence passed through Pendleton County, and in Highland County met reenforcements which were hurrying from Staunton to help drive McClellan's army back. The battle had been already lost and the campaign was over.

25. **The Result.**—By the middle of summer, the whole northwestern part of Virginia had been wrested from the Confederates and they were never again able to gain a foothold in it, although short but destructive raids by dashing Confederate leaders were occasionally made into it, as will be shown in

the following pages. General McClellan came at once into prominence by his victory, and he was soon called to Washington where he was given command of the Army of the Potomac, and led it against Richmond, and was defeated.

26. The Cheat Mountain Campaign.—Within a week after the Confederates were driven out of northwestern Virginia, the battle of Bull Run occurred, south of Washington, and the victory which the Confederates gained there encouraged them in their belief that they would be able to drive all Union forces from Virginia. A strong general was needed west of the Alleghanies to recover the lost ground, and General Robert E. Lee with fourteen thousand men, was sent into Randolph County to fight nine thousand Federal troops. General Reynolds had succeeded McClellan in command in that region. The Federals had fortified two camps seven miles apart, one on Cheat Mountain guarding the road from Staunton, the other near the source of Tygart's Valley River, guarding the road from the Kanawha Valley. In September, 1861, General Lee moved forward to attack these posts, fully expecting to capture them. Had he succeeded, nothing would have stood in his way of advancing to Grafton, Clarksburg, and perhaps to the Ohio River. No detailed report of this campaign was made by General Lee, but his private correspondence shows how keenly he felt the disappointment when he failed. It is not clearly understood why he did not succeed, as his force was sufficient to accomplish the work. Rains interfered with the movements of troops; and one division of his army skirmished to no purpose in front of the fort on Cheat Mountain. But no general attack was made, and the whole army retreated without striking a blow. After that time there never was much effort made by the Confederates to gain a foothold west of the Alleghanies in West Virginia.

27. Fight at Greenbrier River.—A portion of the Confederate force remained west of the mountains, and fortified a camp at Greenbrier River, in Pocahontas County, ready to

oppose a further advance of the Federal forces. The place was only thirteen miles from the Union position on Cheat Mountain, and the attack, which the Confederates were expecting, was not long delayed. In October General Reynolds led five thousand soldiers across Cheat River into Pocahontas County, assaulted the Confederates and drove them a mile. But he encountered determined resistance, was unable to dislodge them from their trenches, and he finally retreated.

28. **Battle on Alleghany Mountain.**—The Confederates did not attempt to follow up their victory; but on the contrary, they soon afterwards fell back to the Alleghany Mountain where they fortified a camp and went into winter quarters. That was the highest camp occupied as a post during the Civil War. The contest for the control of West Virginia had begun in May when the Confederates gave up Grafton. In June they retreated from Philippi; in July from Rich Mountain; in September they failed at Cheat Mountain; in October they gave up their purpose of holding the Greenbrier River and fell back to the Alleghany Mountain. There in December they were attacked by General R. H. Milroy, who had succeeded General Reynolds in command of the Federal forces in that part of West Virginia. General Milroy was repulsed. He withdrew to Huntersville in Pocahontas County, and went into winter quarters. Again the Confederates did not follow up their victory. The two armies remained facing each other until spring, when the Confederates moved over the mountain toward the east. Soon afterward the Federal army followed, and the scene of action was removed beyond West Virginia's borders.

29. **In the Kanawha Valley.**—When the war began, Virginia feared an invasion of her transalleghany territory in two quarters: first, the Monongahela Valley; second, the Kanawha Valley. Details of the invasion of the Monongahela Valley by Federal forces have been given. It now remains to see what events occurred in the Kanawha Valley. General Henry A.

Wise, who had been Governor of Virginia, was ordered to the Kanawha about the time that General Garnett was sent to the Northwest. He experienced much difficulty in raising and equipping soldiers in that quarter for the Confederacy; but he finally put eight thousand troops in the field. It was his purpose to march northward to Parkersburg; but the opportunity to march northward did not come. In July, 1861, General J. D. Cox, with a Federal army, crossed the Ohio into the Kanawha Valley. Soon afterward another Union army moved southward from Clarksburg. There was skirmishing at intervals; but the Confederates gradually fell back, until they held only the upper portion of the Kanawha Valley.

30. **Battle of Cross Lanes.**—Late in August General John B. Floyd, with 2500 Confederates, attacked the Union force, under General Tyler, at Cross Lanes, in Nicholas County, and defeated it, taking one hundred prisoners. General Tyler retreated to Charleston, and General Floyd fortified the position just gained, and proposed to hold it. Seven days later General Wise with another Confederate force, attacked the Union army under General Cox near the mouth of the Gauley River, and was defeated. General Cox pursued him vigorously for some distance.

31. **Battle of Carnifex Ferry.**—On the day of the battle at the mouth of the Gauley, General Rosecranz left Clarksburg with reenforcements for the Kanawha Valley. Within seven days he made the march to Nicholas County, and late in the evening attacked General Floyd at Carnifex Ferry. The Confederates had 4,000 men and sixteen cannon in a fortified position. After a severe fight of several hours the Union general withdrew his forces to wait till the next morning. That far the advantage had been with the Confederates. During the night General Floyd made discoveries which led him to believe that the Federals were about to seize the bridge over the Gauley. This would cut off his retreat. Without waiting to renew the fight in the morning, the Confederates withdrew

across the river, destroying the bridge and the ferry to prevent pursuit. They retreated into Greenbrier County. The Union forces were unable to cross the river in time to make effective pursuit. Their loss in killed and wounded was 158 men. They captured the Confederate hospital in which were fifty wounded Union soldiers who had been taken prisoners when General Tyler was driven from Cross Lanes two weeks before.

32. **Battle at Gauley Bridge.**—In November an action was fought at Gauley Bridge between General Floyd and General Rosecranz. The Confederates were defeated. That fight closed the campaign in the Kanawha Valley for 1861. All of the lower portion of the valley was in the hands of the Federals. The Confederates were finally pushed over the Alleghanies, and never again obtained a foothold in that quarter, although large bodies were occasionally in that region, and sometimes remained several days. General Floyd and General Wise might have offered a much stronger opposition to the Federal armies in the Kanawha Valley had they acted in concert and harmony; but they quarreled constantly, neither would help the other, and they were beaten in detail. Both were politicians, and had been opponents too long to be friends again, even when facing a common enemy. General Floyd had been Secretary of War under President Buchanan, and had anticipated the war in time to transfer large quantities of military stores from northern arsenals to southern armories, where they were ready to be seized by Confederates as soon as the conflict opened. General Wise was the most influential of the men in the Richmond Convention who dragged Virginia into the Confederate cause.

33. **Virginia Divided Against Herself.**—At the close of 1861 Virginia had lost that portion of her territory lying between the Alleghanies and the Ohio. The danger of this had been clearly foreseen by the authorities at Richmond. It was well known that the people west of the mountains had long wished

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for a state of their own. The eastern part of Virginia contained the bulk of the wealth, and the people west of the Alleghanies were looked upon with an indifference little better than contempt, and they knew it. The knowledge of it had been ground into them by three quarters of a century of injustice and oppression. They had been taxed to build roads and bridges and public buildings and all manner of improvements for the eastern part of the State, while the western part received little or nothing. All state offices of importance were filled by eastern men. The western man, although the equal of any and the superior of many, knew that he need not aspire to political preferment. That no community of sentiment or interest bound together the East and the West, was not wondered at by those who were acquainted with the history of the State. So long as the West Virginians could not help themselves, the eastern Virginians made no effort to please or pacify them. But when the war came, the West Virginians saw their opportunity, and they seized it. Long before that time Daniel Webster had foretold exactly what would happen should Virginia ever attempt to secede from the Union; it would lose its transalleghany territory.

34. **Attempt to Win West Virginians.**—The politicians at Richmond saw their mistake when too late. They tried in vain to win back the mountaineers. Governor Letcher issued a proclamation, which was published west of the Alleghanies in 1861, acknowledging past injustice to a brave people, and promising that equality should prevail in the future. The proclamation did not check the tide which had already turned. West Virginia was already lost to the Mother State. Its sons were enlisting in the Union cause and were fighting side by side with soldiers from the North and West. After 1861 the Confederates never made a serious attempt to recover or hold West Virginia. Some of the politicians and generals in the Confederate service believed, as late as the spring of 1863, that the majority of the West Virginians were in sympathy

with secession, and that many would enlist in the Confederate army if an opportunity were given them to do so. But when the great Imboden raid of 1863 had swept over the State, almost to the Ohio, and had rolled back, having picked up scarcely any recruits, it was realized that the West Virginians had cut loose from the old State. From that time till the close of the war, the Confederates considered the region west of the Alleghanies as the enemy's country.

35. **West Virginia Soldiers.**—West Virginia furnished 36,530 soldiers for the Union army, and about 7000 for the Confederate army Those who entered the Confederate service had nearly all done so before the close of 1861. In addition to the regular troops, West. Virginia had 2300 Union Home Guards in the field. After the close of the campaigns in the Monongahela and Kanawha valleys in 1861, the military operations in West Virginia for the remainder of the war were independent of any general movements elsewhere, and consisted principally of dashing raids by Confederates whose chief purpose was to carry off horses and cattle, and incidentally to inflict as much damage as possible upon the Union cause. The remainder of this chapter will be largely taken up with a chronological list of the principal raids by Confederates into West Virginia, and the attacks and counter raids by Union forces.

36. **The Jenkins Raid.**—In August, 1862, General A. J. Jenkins with 550 Confederates made an extensive raid through the counties of Monroe, Greeenbrier, Pocahontas, Randolph, Upshur, Lewis, Gilmer, Roane, and Jackson, crossed into Ohio, and returned to Virginia by way of the Kanawha Valley, after a march of five hundred miles.

37. **The Loring Raid.**—In September, 1862, General W. W. Loring led a Confederate force into the Kanawha Valley. He defeated General J. A. J. Lightburn at Fayetteville, pursued him to Charleston, and there captured immense quantities of military stores. The Federals abandoned the valley of the

Kanawha, and retired to Ohio. The Confederates soon withdrew from that part of the State.

38. **Imboden's Attempt to Destroy the Railroad.**—In November, 1862, General John D. Imboden with 310 Confederates dashed over the Alleghanies from Pendleton County and attempted to reach the Baltimore and Ohio Railroad at Rowlesburg. He hoped to be able to destroy the bridge over Cheat River and wreck the high trestles on the face of Laurel Hill, thus crippling the road for months. He reached St. George, within twenty miles of Rowlesburg. He learned that Federal troops were moving to cut him off, and he retreated to Pendleton County.

39. **The Great Imboden Raid.**—In the spring of 1863 occurred the great Imboden Raid. Five thousand Confederates, in two divisions, crossed the Alleghanies and overran a large part of the State. The northern division, under General William E. Jones, crossed by the way of Greenland Gap to Preston County. It moved westward, destroying the railroad and collecting horses and cattle. The suspension bridge across Cheat River at Albrightsville, was cut down. The suspension bridge at Morgantown was set on fire but did not burn. The railroad bridge over the Monongahela at Fairmont was blown down with powder. In the meantime General Imboden with the main army crossed the mountains into Randolph County; captured Beverly; moved into Barbour County; proceeded into Upshur and Lewis, and there formed a junction with the division of General Jones. The Federal forces everywhere retreated and concentrated at Clarksburg and West Union. The Confederates under Jones advanced within forty miles of Parkersburg and there burned vast quantities of petroleum at the Wirt County oil wells. General Imboden's force moved southwestardly from Weston, and the Kanawha Valley was swept by Confederates. They slowly retired across the Alleghanies late in May. Many thousand horses and cattle were carried away. The great raid had two objects: one, to gain

recruits; the other was to procure horses and cattle for General Lee's contemplated movement into Pennsylvania, which terminated at Gettysburg.

40. **General Averell's Cavalry.**—A new feature entered into the war after the Imboden Raid of 1863. It was the part taken by General W. W. Averell's cavalry. At the time of the raid the Union forces in northern West Virginia were under the command of General B. S. Roberts. His failure to check the raid caused him to be superseded by General Averell. The Federal troops had been mostly infantry up to that time. General Averell mounted them and made of them a body of cavalry perhaps not inferior to the best the world has ever seen. They were nearly all West Virginians. This cavalry moved so rapidly that the part of the State in which it operated was well protected.

41. **Imboden in Hampshire County.**—In June, 1863, General Lee sent General Imboden into Hampshire County to destroy bridges. By that means he hoped to prevent the movement of Federal troops from the West when the Gettysburg campaign should begin. A bridge across the South Branch was destroyed. Imboden marched directly from there to Gettysburg.

42. **Attack on Beverly.**—Late in June General William L. Jackson, with 1200 Confederates, crossed the Alleghanies on a raid. He attacked Beverly; but Averell's cavalry arrived and drove him back across the Alleghanies. Averell then led his forces with all haste toward Gettysburg, but arrived too late to take part in the battle. He attacked the retreating Confederates under Bradley T. Johnson, near Martinsburg, and defeated them.

43. **The Battle of Rocky Gap.**—Soon after the Confederates had fallen back into Virginia from Gettysburg, a force of 2,000 under General Sam Jones crossed into Greenbrier County. General Averell with 1300 men went in pursuit; and

the two armies coming together at Rocky Gap, near White Sulphur Springs, one of the severest battles on the soil of West Virginia took place. It continued into the second day. Averell's ammunition ran short, and he retreated, having lost one-sixth of his army.

44. **Battle of Droop Mountain.**—In the autumn of 1863 Confederates under General Echols entered Pocahontas County. General Averell led 2500 men from Beverly, and the forces joined battle at Droop Mountain. The Confederates were defeated with very heavy loss, and barely made good their retreat.

45. **The Great Salem Raid.**—From December 8, to December 25, 1863, occurred one of the most remarkable military achievements in the history of the country. It was Averell's raid from Keyser, in West Virginia, to Salem in Virginia, and his escape when escape seemed impossible. He had 2500 cavalry, and artillery. It was a momentous issue. General Burnsides was besieged at Knoxville, Tennessee, by General Longstreet, and the Government at Washington feared that the army under Burnsides could not hold out until reenforcements could be sent. The only hope was in cutting Longstreet's line of supplies (the railroad passing through Salem) and compelling him to raise the siege. Averell was ordered to cut that railroad, even if to do so he must sacrifice his whole army. The smaller sacrifice could be made, if it would save Burnsides. On December 8, Averell with his veteran cavalry moved from Keyser, passed through Petersburg, Monterey, Back Creek, Gatewoods, New Castle to Salem. Four Confederate armies, any of them larger than his, marched and countermarched to cut him off. Still, during eight days he rode toward Salem in terrible storms, fording and swimming overflowing mountain streams, pursuing ravines and miserable roads night and day, and on December 16 he struck Salem. During the last twenty hours his men rode without rest. The Confederates had ascertained the point of attack, and were

hurrying troops from Lynchburg. But Averell drove them back and tore up the railroad for a distance of sixteen miles. He destroyed immense quantities of military stores, and performed the task which had been assigned him. Then began the perilous retreat. The Confederate armies were surrounding him. Rains had deluged the country. Streams were crossed by swimming. He dragged his cannon through with ropes. When there were bridges, he burned them behind him, and hurried on. He captured a dispatch and learned from it that only one avenue of escape was possible. That was the road which led across the Alleghanies into Pocahontas County. The rain had changed to snow. The cold was intense. The roads were sheets of ice. Snow and sleet broke trees and blockaded the roads. So terrible was the storm that cattle froze to death in the fields. Horses fell and were crippled. Soldiers dismounted and dragged the cannon by hand up the mountains, and tied trees to them to hold them back in descending. The Confederates hung upon the rear, and continual fighting was necessary to cover the retreat. The army reached Beverly in a miserable plight from cold and famine. But not a cannon had been lost, and only 119 men.

46. **Fitzhugh Lee's Raid.**—One of the armies that had maneuvered to capture Averell at Salem was under General Fitzhugh Lee. No sooner had Averell escaped than Lee retaliated by invaded the South Branch Valley. He penetrated as far as Romney. The weather was so cold and the roads so icy that he could not haul his artillery, and it was left behind, at the eastern base of the Shenandoah Mountain. He met but little resistance, and soon returned to the Valley of Virginia.

47. **Early's Raid to the South Branch.**—Late in January, 1864, General Early invaded the South Branch with an army. He compelled the evacuation of Petersburg by its Federal garrison under Colonel Thoburn, and he sent foraging par-

ties under General Rosser to collect cattle. Rosser destroyed some small railroad bridges east of Cumberland.

48. **The Dublin Raid.**—In May, 1864, an expedition moved from the Kanawha against Confederates who were guarding the railroad leading from Lynchburg into Tennessee. The Federal forces were commanded by General Crook; the cavalry by Averell, who destroyed the railroad at Dublin. During the expedition the battle at Cloyd Mountain was fought, in which the Confederate General Albert G. Jenkins was killed.

49. **McNeill's Raid to Piedmont.**—In May, 1864, Captain J. H. McNeill with sixty-one Confederates, captured Piedmont in Mineral County. He took more than one hundred prisoners, and burnt much railroad property.

50. **McNeill at Springfield.**—In June of that year Captain McNeill with sixty men attacked and defeated a much stronger Union force at Springfield in Hampshire County, and took sixty prisoners.

51. **Imboden on the South Branch.**—On July 4, 1864, General Imboden led a raid, the object of which was to destroy the railroad east of Cumberland. He attacked a blockhouse and an armored car at South Branch Bridge. He blew up the car with a shell, but he was unable to capture the blockhouse, and he retreated.

52. **Defeat of McCausland.**—In August, 1864, Confederates under Generals McCausland and Bradley T. Johnson retreated up the South Branch after having led a disastrous raid into Pennsylvania, and having burned Chambersburg. The Federal cavalry under Averell pursued them through Maryland, and overtook them at Moorefield. In a short fight the Confederates were routed, and lost hundreds of prisoners, together with all the plunder they had carried from Pennsylvania.

53. **Witcher's Raid.**—In September, 1864, Confederates to the number of 523, under Colonel V. A. Witcher, entered

West Virginia from Tazewell County, Virginia, and penetrated to Weston and Buckhannon, carrying away many prisoners and much property.

54. **Hall's Raid.**—Late in the fall of the same year, Major Hall with 550 Confederates, picked from twenty-one regiments, attacked a smaller force of Federals at Beverly under Colonel Youart. The encounter took place before daylight, and was disastrous for both sides. The Federals lost one-fourth of their number, and the Confederates half of theirs. Hall was killed and his men fled.

55. **Rosser's Raid to Keyser.**—In November General Rosser led 2000 Confederates to Keyser where he surprised 800 Federals under Colonel George R. Latham, and dispersed them, capturing many prisoners and much property.

56. **Rosser's Raid to Beverly.**—In January, 1865, General Rosser and 300 Confederates attacked Beverly and defeated Colonel Youart and took 580 prisoners. These prisoners were marched, many of them with barefeet, through snow to Staunton. Some of them fell and died from cold and exhaustion. Shortly after that time the outlying Confederate bands were ordered to Richmond to fight Grant whose grip could not be shaken loose. Lee surrendered and the war was over.

57. **State Guards.**—West Virginia had in the field thirty-two companies of State troops, called Home Guards. Their duty was to defend against invasion the counties to which they belonged. Below is a list of the captains and the counties to which they were accredited.

Captain M. T. Haller.	.....	Barbour County.
" A. Alltop	.....	Marion "
" H. S. Sayre	.....	Doddridge "
" J. C. Wilkinson	.....	Lewis "
" George C. Kennedy	.....	Jackson "
" John Johnson	.....	Jackson "
" William Logsdon	.....	Wood "

Captain William Ellison	Calhoun	"
" Alexander Donaldson	Roane	"
" Hiram Chapman	"	"
" H. S. Burns	Wirt	"
" John Boggs	Pendleton	"
" M. Mallow	"	"
" John Ball	Putnam	"
" J. L. Keling	Upshur	"
" William R. Spaulding	Wayne	"
" M. M. Pierce	Preston	"
" William Gandee	Roane	"
" Nathaniel J. Lambert	Tucker	"
" James R. Ramsey	Nicholas	"
" John S. Bond	Hardy	"
" William Bartrum	Wayne	"
" Ira G. Copeley	"	"
" William Turner	Raleigh	"
" Sanders Mullins	Wyoming	"
" Robert Brooks	Kanawha	"
" B. L. Stephenson	Clay	"
" G. F. Taylor	Braxton	"
" W. T. Wiant	Gilmer	"
" Isaac Brown	Nicholas	"
" Benjamin R. Haley	Wayne	"
" Sampson Snyder	Randolph	"

58. **Close of the War.**—West Virginia was spared many of the horrors and much of the destruction of war, because no vast campaign and no heavy battle occurred within our State. But the demoralization and ruin in many localities were sad enough. Bridges were burned; highways were almost impassable from neglect of repairs and excessive use; villages that were prosperous when the war began were overgrown with weeds at the close; cattle and horses were carried off; court houses, churches, and even private residences, were used and abused by soldiers; public records were mutilated or destroyed;

and waste and extravagance hand taken the place of frugality in too many homes. But worse than all this, an army came home maimed for life, and another army never returned. They lie buried under the northern oak and the southern pine. West Virginia is a war state. It owes its existence as a state to the Civil War.

CHAPTER XIII.

BOREMAN'S ADMINISTRATION (1863–1869).

1. **The New State Government.**—President Lincoln having issued his proclamation on April 20, 1863, that the people of West Virginia had made and ratified certain changes in the Constitution as provided for by the act of admission, approved December 31, 1862, and that on June 20, 1863, the act admitting the State into the Union would take effect, a convention was thereupon assembled in Parkersburg, on May 9, 1863, for the purpose of nominating state officers.

2. **The Executive Officers Chosen.**—The executive officers nominated by this convention were Arthur I. Boreman, of Wood County, for Governor; Samuel Crane of Randolph, for Auditor; Campbell Tarr of Brooke, for Treasurer; J. Edgar Boyer of Tyler, for Secretary of State; and A. Bolton Caldwell of Ohio, for Attorney-General; all of whom were elected without opposition on the fourth Thursday in May, 1863, and assumed the duties of their respective offices on the 20th day of June following.

3. **The First Legislature.**—The members of the first legislature that sat under the new State, were chosen at the same election at which state officers were chosen. This body met for the first time on June 20, 1863, in the Linsly Institute in Wheeling. There were present twenty members of the Senate, and fifty-one members of the House of Delegates. John M. Phelps of Mason County, was chosen President of the Senate and Spicer Patrick of Kanawha County, Speaker of the House. Of the seventy-one members forty-eight were native Virginians; three were born in Maryland; and not one of the

remaining twenty was born south of the Mason and Dixon line. Thirty-three were farmers; six only were lawyers; and almost every profession and occupation had its representative among the remainder.

4. **The First Supreme Court of Appeals.**—The supreme judicial power was entrusted to three able lawyers of mature years, who were nominated at the Parkersburg convention, and elected at the May election without opposition These were Ralph L. Berkshire of Monongalia, William A Harrison of Harrison, and James H. Brown of Kanawha.

5. **Other State and County Officers.**—At the May election (1863) Judges of the circuit court were elected in nine out of the ten circuits, and county officers were chosen in every county in the State except those that were still occupied by the Confederate forces.

6. **The Beginning of the New State.**—When the 20 day of June, 1863, arrived, the day set by the President's proclamation for the new State to be admitted into the Union and begin its career as one of the component States of the Federal Union, it was equipped with a full complement of officers—legislative, executive, and judicial—for putting into operation the machinery of state government. A New Dominion rose west of the Alleghanies, with a population, it is true, less than 400,000, but destined by reason of its own sources of wealth, during the next third of a century, to exceed 1,000,000; and the Old Dominion shrunk to its natural area, drained by the watershed of the Atlantic.

7. **Senators and Representatives Chosen.**—On the 4 day of August, 1863, the Legislature elected Waitman T. Willey of Monongalia, and Peter G. Van Winkle, of Wood as the first Senators from West Virginia in the Congress of the United States. Later the State was divided into three Congressional districts, and Jacob B. Blair of Wood, William G. Brown of Preston, and Kellian V. Whaley, of Mason, were elected to

represent their respective districts in the House of Representatives.

8. State of the Border During the War.—At the time that Governor Boreman entered upon the discharge of his duties as executive of the new State, the Civil War was running at high tide, and no crushing victory had yet been achieved by the Union arms: Gettysburg had not been fought, and Vicksburg had not surrendered. The southern tier of counties in West Virginia bordering on Virginia and Kentucky were beyond the Federal lines and under the control of the Confederacy, where they remained until near the close of the war. The people of these counties were forced to pay a "tithe in kind" of their products, in addition to taxes, into the treasury at Richmond, for the support of the Confederate Government, and besides were obliged to suffer frequent impressments and seizures at the hands of the military forces. Other counties near the border were occupied alternately by the Federal and Confederate forces. The border, over which the combatants surge back and fourth, always suffers most; it is there that the plunderer is safest and reaps his richest harvest; and it is there that lawlessness and crime hold sway, because the restraints of government can not be exercised. The Governor complained to the Government at Washington, that the State troops were unable to cope with the bands of guerrillas and marauders over so extensive a frontier. West Virginia was thereupon made a military department, and General Kelley was placed in command. The Governor called upon the people "to organize themselves into companies for their own protection and to capture or kill these outlaws," who were robbing, plundering and sometimes murdering, peaceable and non-combatant inhabitants, without regard for or fear of the law. "There is no law for them," continues Boreman, "but the law of force to be administered wherever and whenever they may be found." These are strong words; but they are significant of the intense state of disorder that prevailed along the

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border, and in some parts of the State, during the fever-period of the war. The activity of the military forces, particularly under General Kelley, somewhat improved the situation. The irregular bands were scattered and dispersed time and time again, only to reassemble; but they gradually became fewer and decreased in numbers, and the life and property of the private citizen became in a measure secure. Notwithstanding all this, irregular bands of marauders infested some portions of the State to the terror of the civil authorities, long after the Civil War had ended.

9. **The Public Revenue.**—Owing to the disturbing conditions just mentioned, the civil power of the State was feeble until well toward the establishment of peace. In 1864 the Governor reported in his message to the Legislature, that about one-half of the counties in the State had paid no revenue at all, and others had not paid in full.* The burden of supporting the state government fell upon a few counties, and the administration was embarrassed for means with which to meet the ordinary expenditures. In this state of affairs the construction of much needed public buildings could not be undertaken.

10. **The Election of 1864.**—The officers of the state administration were elected in 1864 practically without opposition: only a few scattering votes were cast against the regular nominees. There was no change in the administration, except that Granville D. Hall became Secretary of State in place of Boyer, and Joseph M. McWhorter became Auditor in place of Crane.

11. **Law for the Forfeiture of Property.**—The act was passed in 1863, providing for the "Forfeiture of property in this State belonging to the enemies thereof." This was of course

*A committee of investigation reported to the Legislature that the counties of Braxton, Berkeley, Clay, Cabell, Fayette, Gilmer, Hampshire, Hardy, Lewis, Nicholas, Roane, Randolph, Tucker and Wayne, were without sheriffs, or other collectors of the revenue, "because of the danger incident thereto."

meant to include those who had cast their fortunes with the Confederacy. The circuit courts were required to take cognizance of cases arising under the law, and to proceed to dispose of the property forfeited, "when it is made to appear" to the court that there are such cases. But it was not made the duty of any officer to bring the cases before the court. Complainants alleging forfeiture did not bring their suits "Equity abhors a forfeiture." Although there were thousands of instances where the property of participants in the rebellion might have been forfeited under this law, it remained practically a dead letter upon the statutes: honest men would not take advantage of the political disabilities of their neighbors to seize their property. A neighbor, who thought the law of forfeiture operative without a decree of court, entered upon some vacant land belonging to a Confederate soldier, and made a clearing. Sometime after the war he met the soldier and said to him, "If I had known that land belonged to you, I would not have cleared it." "Well neighbor," said the soldier, "you knew it did not belong to you," and the land was restored.

12. **End of the War: Civil Authority Restored (1865).**—The surrender of Lee at Appomattox made an end of the organized resistance to the authority of the Federal Government. The work of reorganization and reconstruction followed. Permanent civil organization in West Virginia was speedily improved; but there were many times and places when and where disorder, violence, and riot flared up, and the strong arm of the military power was invoked in aid of the civil authority.

13. **Sources of Disorder.**—The sources of these disorders arose chiefly from the irreconcilable differences that existed in the minds of the men who had taken opposite sides in the war. The Unionist looked upon the Confederate as one who,

by reason of his course, was not yet to be entrusted with the high and responsible duty of making and administering the laws; and he passed acts depriving him of his right to vote and to hold office by reason of participation in rebellion. The participants in the rebellion could not regard themselves as traitors unworthy of public trust and confidence; they had fought for a principle, had been defeated, and yielded to the ultimatum of power. They were "impatient to repossess themselves of place and power," although every sensible man recognized that a removal of his disabilities was only a question of time. "The eradication of the spirit of insubordination engendered by the late rebellion was a work of time." It took nearly two decades after the war to smooth down the antagonisms engendered by the war. Fraternal feeling has at last prevailed; and no one now stops to enquire whether his neighbor, or the candidate for office, espoused the cause of the Union or the Confederacy in their terrific struggle.

14. **Berkeley and Jefferson Counties Added.**—Berkeley and Jefferson are two beautiful and fertile counties that lie at the lower or northern end of the Valley of Virginia and are watered by the Potomac and the Shenandoah and their tributaries. These counties were added to West Virginia after the State was admitted into the Union. An act was passed in January, 1863, by the Restored Government of Virginia, in pursuance of which a poll was opened to take the sense of the voters of Berkeley County on the question of annexation to West Virginia, and Governor Pierpont, in July, 1863, certified to the Governor of West Virginia that a "very large majority of the voters of Berkeley County" were in favor of becoming a part of West Virginia. A similar act was passed in regard to Jefferson County, a poll was opened, and the result certified as in the case of Berkeley County. Separate acts were passed at different times admitting the two counties as a part of the territory of West Virginia. A large number of the inhabitants of both counties was absent with the Confed-

eracy at the time the votes were taken on the question of annexation. By the fall of 1865 these absentees had returned to their homes. It soon became apparent that there were a great many people in both counties, particularly in Jefferson County, who, by reason of their geographical situation and their social status and feeling, preferred to live under the jurisdiction of Virginia, and they contended that the transfer of the two counties to West Virginia was irregular, unconstitutional, and void. They refused to acknowledge that they were West Virginians. They prepared to hold an election for members of the General Assembly of Virginia, and to vote for a member of Congress in the old Virginia district, on the day when the Virginia elections were to be held, just as if there was no such state as West Virginia in existence. Governor Boreman issued a proclamation of warning, ordered the arrest of all who should attempt to hold the election, and, at his request, Major General Emory, commanding the district of West Virginia, was detailed with sufficient force to aid the civil officers in maintaining the law. Thus threatened the malcontents yielded. Virginia passed an act declaring the laws giving the consent of that State to the annexation of the counties, repealed. As a counter movement a bill was introduced into Congress and passed giving the consent of that body to the transfer of the two counties from Virginia to West Virginia. But opposition was not at an end. In December, 1866, a suit in equity was brought by Virginia against West Virginia in the Supreme Court of the United States, praying the court to decree that Jefferson and Berkeley counties were a part of the territory of Virginia. This suit was decided in 1871 in favor of West Virginia. The decision was quietly accepted as final, and as incidentally setting at rest all questions concerning the constitutionality of the act admitting West Virginia.

15. **Status of the Blacks (1866.)**—Lincoln's Emancipation Proclamation did not affect the status of slavery in West Vir-

ginia: its force was limited to the territory in armed opposition to the authority of the Union. The Thirteenth Amendment to the Constitution (December 18, 1865,) abolished slavery in this State. But what was the status of the blacks? They were free; but they could not vote, or hold office, and they were not competent as witnesses in any court. Under these circumstances their persons and property were to a great degree at the mercy of designing persons, who might choose to take advantage of their defenseless condition. Boreman recommended the removal of their disabilities as witnesses. Finally the Fourteenth Amendment (1868) guaranteed to them as great a measure of civil rights as it was possible to do by law.

16. **Reunion of the States Proposed (1866).**—While Francis H. Pierpont was yet Governor of Virginia, the General Assembly of that State made overtures looking to the reunion of the two States. The Legislature resolved, "That the people of Virginia deeply lament the dismemberment of the 'old State,' and are sincerely desirous to establish and perpetuate the reunion of the States of Virginia and West Virginia;" and appealed to their brethren of West Virginia to concur in the adoption of suitable measures to restore the "ancient commonwealth" of Virginia, with all her people, and up to her former boundaries. Three commissioners were appointed to conduct negotiations, representing the different geographical sections of the old State: William Martin, south of the James River; John Janney, north of the James; and Alexander H. H. Stuart, west of the Blue Ridge. In submitting this resolution to the Legislature of West Virginia, Governor Boreman said: "The will of the people of West Virginia in regard to this proposition can not be misunderstood; and in my judgment the members of the Legislature.....will promptly reject it in the most decided terms. .....and declare that it is the settled purpose of our people that West Virginia shall maintain a separate state existence." In fact the redin-

tegration of Virginia was now possible. The Legislature of West Virginia (1867) resolved, "That the people of this State are unalterably opposed to a reunion ..... and will not entertain any proposition looking to that end."

17. **Soldiers' Medals of Honor.**—In June and July, 1865, the State of West Virginia discharged an army of upwards of 25,000 men. In the following January on motion of Colonel John S. Witcher, a member of the House of Delegates from Cabell County, the Committee on Military Affairs was instructed to "inquire and report as to the expediency of providing, and presenting to each soldier from the State who had been or may be honorably discharged the service of the United States, a medal of honor. The chairman of the committee, Colonel William B. Curtis of Ohio County, reported the following resolution, which was concurred in by the Senate:

"*Resolved* .... That the Governor procure, or cause to be procured, suitable medals as tokens of respect to the officers and soldiers of West Virginia, who have served during the rebellion in the service of the United States, containing upon one side the name of the recipient, with his regiment, battalion, or battery, surrounded by a wreath; upon the reverse side some appropriate design and inscription. The medal to be suspended by a piece of tricolored ribbon; its artistic features to be equal to the Crimean medal, and its cost not to exceed one doller each.

"The medals and inscriptions to be of four different kinds:

"1. For the officers and soldiers of the volunteer army who have been or may be honorably discharged from the service.

"2. For the officers and soldiers who have been killed in battle.

"3. For the officers and soldiers who have died from wounds received in battle.

"4. For the officers and soldiers who have died from disease contracted in the service.

"The medals for officers and soldiers who have been killed in battle or who have died of wounds or disease in the service, to be delivered to the families of said officers and soldiers."

The engraver was Mr. A. Demarest of New York. The name of J. Sigel, the artist who finished the dies, appears at the base of the central figure on the obverse. The medals were made of copper, finished with a proof surface, finely bronzed, and are size 24 of the American scale fixed by the Numismatic and Antiquarian Society of Philadelphia. The exact number furnished the State was 26,099, of which over 3,000 remained on hand, unclaimed in 1881, probably owing to the fact that those entitled to them had removed to the far western States, and were ignorant of, but not indifferent to, the existence of the medals.

18. **Condition of the State (1869).**—During the summer and fall of 1868 partisan feeling was at high tension. The machinery of state government was yet new; friction was increased by partisan legislation which deprived the participants in the rebellion of their right to vote and to hold any public office or trust, state or local; the disfranchised fretted under ironclad oaths that were prescribed for them before they could divest themselves of their political disabilities; the submission and adoption of the Fourteenth Amendment conferring unabridged civil rights upon the blacks, produced a reaction in the feelings and sympathies of thousands who had stood for the Union as against Secession; the boards of registration, before which every voter must appear and establish his right to vote, and be registered before the day of election, was looked upon by the discontented element as the machinery of tyranny; intimidation of public officers was not infrequent in some localities; mobs gathered and threatened violence, which the cooler heads often found it difficult to prevent; the execution of all law was more or less obstructed; it was impossible to secure a full execution of the registry and election laws; at some places no elections were held for fear of violence; political

feeling was manifesting itself in tumult, riot, and disorder. This condition was more or less general over the State; but it was only in a few localities that it took on that violent form which defied control by the civil officers of the law. Free fights and broken heads were common everywhere; but the civil authority, as a rule, still reigned. In some counties, however, the opposition to the registration laws and test oaths took on so violent a form that the Governor felt called upon to appeal to the President for Federal troops to aid in the execution of the law and the preservation of order. A force was already stationed at Union in Monroe County. Additional forces were ordered out for the maintenance of order and in aid of the execution of law in the counties of Wayne, Cabell, Logan, Randolph, Tucker, Barbour, and Marion. In justification of his course Governor Boreman said: "Just as long as lawless men .. .. persist in their opposition to the constituted civil authorities, in such force and numbers that they cannot be otherwise overcome and made to submit to the laws, I shall feel constrained, and shall not hesitate to rely on military authority."

19. Registration and Disorder.—It may seem that a law whose object is merely to secure a listing or registration of legal voters in advance of an election, ought not to give rise to trouble. But in this time registration became the means of identifying those who had given aid to the rebellion in any form, and the boards of registration were empowered to take evidence and make up the list of voters accordingly. Those whose names were not on the roll could not vote. Those who were ineligible were anxious to conceal their identity, except, perhaps, the soldiers who had gone into the Confederate army. With few exceptions they were inclined to obey the law. All the world admires a valiant soldier. In regard to the execution of the law the Governor says: "In most of the counties the law was fairly executed; in a few rigidly; while in others it was disregarded to such an extent that almost the entire

male population of the requisite age, who desired to do so, were permitted to register without much regard to other qualifications." In anticipation of the adoption of the Flick amendment there was a general "letting up" in many counties in the restrictions. But there is another side to this story in some localities. In reviewing the situation after the lapse of more than a quarter of a century, it seems that the disorders referred to arose in many instances from an unnecessarily rigid enforcement of the law in regard to the registration of voters. The voter in the first instance appeared before the registrar of his township and was required to show to the satisfaction of the registrar that he was a qualified voter. The registrar might require him to take and subscribe an oath to the following effect: that since June 1, 1861, he had not engaged in rebellion against the United States; that he had not in any way whatever aided or assisted in such rebellion; and that he took the oath freely without mental reservation or purpose of evasion. If rejected, he might appeal to the county board of registration. If registered, the county board might summon him to appear and show cause why his name should not be stricken from the register of voters. The board had power to examine parties on oath, to summon and examine witnesses, and to hear, try, and determine each case; and might adjourn from day to day until its work was completed. The burden of proof was on the voter to establish, by evidence satisfactory to the board, that he was a qualified voter. But the quantity of proof required was enough to produce *legal satisfaction*, not to satisfy the caprice, suspicion, or whim of the board. In one county at least where Federal troops were called for and sent, the form of procedure was substantially as follows: The voter appeared and enquired, "What is the charge against me?" The president of the board would answer, "We have no charge; you have to prove your loyalty." Thereupon the voter would offer his own testimony and that of some of his neighbors, to the effect that he had remained at home during the war, that he had paid his taxes,

and that they knew of no act of his committed in aid of the rebellion. Now here according to every known rule of evidence the voter had discharged himself of the burden of proof. It shifted to the board to accuse him and make good its accusation by proof. Instead of doing so the board not infrequently asked the witness, "Might he not have done something, or said something, against the Government when you did not see him or hear him?" The witness of course would answer, "O, yes, I can not swear what he did, or did not do or say when I was not present." If the party was under the suspicion of the board of having been at heart in sympathy with the rebellion, the judgment was too often recorded, "Take his name off." It may have been true in many instances that the party whose name was stricken off secretly sympathized with the rebellion; but the fact, if true, rested upon no surer foundation than the suspicion of the board. Such a method of procedure was a mockery. It produced discontent; the people affected murmured; the murmur increased; it presaged a storm; the board took fright; and Federal troops were asked for. It was not to be expected that perfect order would immediately follow the upheaval of the rebellion. Passion had been stirred to its profoundest depths. It must have time to subside. But unquestionably the situation was aggravated by the unwise and unjust administration of a law that of itself was wise enough and just enough.

20. **Establishment and Management of Public Institutions.**—During Governor Boreman's administration the Normal School at Huntington; the branch at Fairmont; the Penitentiary at Moundsville; and the Hospital for the Insane at Weston were established.* It seems to be the fate of state institutions to be subjected every little while to charges of the grossest mismanagement, which call for an investigation. Sometimes there exist the gravest causes for charges, their investigation, and the prompt removal and punishment of the derelict par-

* This asylum was really established by an act passed in 1858, and some work was done on it before the war. See *post*, Part II.

ties. But it so often turns out that the motive for criticism of an institution, or of its management, is based upon personal prejudice, ambition, or feeling, or upon political grounds, that the public have come to place little faith in criticisms of this character, when no doubt the sharpest reforms are sometimes called for. Two investigations of public institutions took place in this early period.

An investigation into the affairs of the Penitentiary at Moundsville was conducted by a joint committee of the Legislature, upon charges of incompetency and mismanagement on the part of the superintendent, G. S. McFadden. A majority and a minority report were submitted. The minority report was signed by one member out of three, and asked for a new committee to make further investigations. The majority reported that there had been no misconduct on the part of the board, and that the superintendent "appears to be particularly well qualified." The matter ended here for the time.

In 1868 a joint committee consisting of three from the Senate and four from the House was appointed, to sit during the recess of the Legislature, to investigate the affairs of the Hospital for the Insane, then under the superintendence of Dr. Hills. A pamphlet had appeared, which became known as the "Hale Pamphlet," from the name of the author, criticising the management of the institution, and particularly the care and treatment of the inmates. No specific charges or accusations were made, but a series of interrogatories was propounded, which indirectly amounted to charges of misconduct, neglect of proper sanitary regulations and precautions, and cruelty to patients; and a vast array of specifications, of a most sensational and scandalous character was filed. Fifty-eight witnesses were examined, whose testimony covered over 500 pages. The committee reported that "after a full, fair, and impartial investigation, in which the charges of fraud, rumors of misconduct, and all matters suggested in the interrogatories of the 'Hale Pamphlet,' and in the newspapers,

were considered, they came to the unanimous conclusion that the accusations and insinuations were in substance groundless and without foundation....., and that under the circumstances the directors and officers of the asylum had managed the the affairs in the best manner possible."

21. **Character of Legislation Under Boreman.**—The Code of West Virginia (1868) contains all legislation of a general nature to the year 1870, when the work was published. An act passed in 1863 provided for "revising, collating, and digesting into a code the statute laws in force in this State," and Daniel Lamb, an eminent lawyer of Wheeling, was appointed to do the work. He reported in printed form chapters one to fifty-two, inclusive; and at his own request, on account of failing health and professional engagements, he was released from further work, and Judge R. L. Berkshire of Morgantown, and Thayer Melvin, Esq., of Wheeling, were appointed to continue the work. They reported the remainder of the code to the Legislature of 1868. An extra session was called to consider the work; it was revised by a committee; finally passed in December, 1868; and published under the editorial supervision of Judge James H. Ferguson, who was then judge of the twelfth circuit. It is the only code that has ever been published by the State. Some new editions called codes have appeared from time to time, but they have been mere compilations of existing laws: revision and classification according to subject matter have not been attempted.

21. **The Election of 1868.**—William E. Stevenson of Wood County was the candidate of the Republican party, and Johnson N. Camden of the same county was the candidate of the Democratic party for the office of Governor. Stevenson was elected by a majority of about 5,000. Thomas Boggess of Roane was elected Auditor; James M. Pipes of Marshall, Secretary of State; James A. Macauley of Ohio, Treasurer; and Theyer Melvin of Ohio, Attorney General.

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23. United States Senators Chosen.—At the session of the Legislature of 1865 Waitman T. Willey, who had drawn the short term of two years in 1863, was reelected to the United States Senate for the full term of six years. The term of Senator Van Winkle was to expire on March, 4, 1869, and at the session of 1869 Arthur I. Boreman, then Governor, was elected as his successor over Daniel Lamb.

24. Farnsworth Acting Governor.—Governor Boreman resigned the office of Governor on February 26, and was succeeded by Daniel D. T. Farnsworth, President of the Senate, who served until March 4, 1869, when he was succeeded by William E. Stevenson.

25. Summary of Progress.—In the six years following the admission of the State into the Union, the population increased more than 50,000; something was done in the way of development; a free school system was organized; and the influences that were to result in the development of one of the richest mineral regions in the country, were beginning to manifest themselves.

CHAPTER XIV.

STEVENSON'S ADMINISTRATION (1869–1871).

1. **Inauguration of the Executive Officers (1869).**—At ten o'clock on the fourth day of March, 1869, William E. Stevenson, the Governor elect, accompanied by the other officers elect, together with a few personal friends, entered the Executive Chamber in the Capitol at Wheeling. Presiding Judge Brown of the Supreme Court of Appeals administered the oath of office to the Chief Executive. A notary public administered the oath to the other executive officer, and congratulations were tendered by the bystanders. As his first official act Governor Stevenson sent to the Senate, which was still in session, the name of the Civil War veteran, General Thomas M. Harris, for confirmation as Adjutant General. The Legislature, some weeks before, had already chosen H. A. G. Ziegler to fill the office of Superintendent of Free Schools. The change was complete; not a single officer of the old administration remained. Acting Governor Farnsworth, on leaving the gubernatorial office, proceeded to the Senate, and claimed and received his seat as President of that body, which had been filled, in the meantime, by Joseph T. Hoke as President *pro tempore*. The Senate decided that the office of Governor, temporarily devolving upon the President of the Senate, does not vacate his seat in the Senate.

2. **Policy of Stevenson.**—The messages of Governor Stevenson give utterance to a vigorous, progressive, and liberal policy, and a broad and comprehensive statesmanship. He urged legislation to encourage the building of railroads, the improvement of rivers, and the inauguration of enterprises "to bring

forth our hidden treasures, and to give easy, cheap, and rapid transportation to market." He favored immigration, and said: "deeply rooted prejudices which heretofore repelled immigration, are rapidly disappearing. .. .. there is nothing partisan in grain, or coal, or lumber; nothing hostile to the public welfare in commerce, internal improvements, or the education of all classes. .. .. We want .. .. small farmers, capital, and skilled labor of all kinds." He regarded the continuance of the test oaths as inexpedient. He urged the adoption of the amendment to the Constitution to restore the privileges of those under disability, on the ground that it would "put an end to much of the animosity and bitterness resulting from our recent Civil War. He recommended that provision be made for the destitute families of soldiers who fell in the war. He suggested the establishment of houses of refuge for both sexes, where youthful offenders might be reformed, instead of being sent to prison to become hardened criminals? He pointed out the mischiefs that result from constant "changes in legislation," and exposed the unsoundness of the reasons urged for calling a convention to amend the Constitution.

3. **Status of the Blacks (1871).**—The colored citizens of West Virginia exercised the privilege of voting, extended to them by the Fifteenth Amendment to the Constitution of the United States, for the first time, at the Fall elections in 1870. They generally availed themselves of the right. The zeal with which they embraced the privilege, and the modesty with which they made use of it, did much to reassure those who honestly doubted the wisdom of placing political power in the hands of the black man, and much to disarm the prejudice of those who opposed the recognition of his political manhood. No serious attempt was made to prevent the black man's exercise of his elective franchise. The colored population of the State at this time did not exceed 18,000. They were generally an orderly and industrious class, ready to work for a living, and willing to acquire a home and educate their children.

4. **Proceedings Against Judge Nathaniel Harrison.**—Judges may be removed from office for misconduct, and other causes, in two ways: (1) by the concurrent vote of a majority of all the members elected to each house; and (2) by a vote of two-thirds of the members of the Senate present in case of a conviction upon impeachment. At the session of 1870 charges were filed against Nathaniel Harrison, judge of the seventh judicial circuit, then composed of the counties of Monroe, Pocahontas, Nicholas, and Greenbrier, together with a petition praying his removal from office. There were two main charges, namely, misconduct and neglect of duty. Under the general charge of misconduct there were some twenty odd specifications, and under neglect of duty one specification. Among other things he was accused of sitting as a judge in cases in which he had a personal interest; of improperly and corruptly advising parties to suits; of appearing as attorney in other courts, in suits in which the subject matter was involved in his own court; of using his judicial power oppressively, vindictively, and corruptly; of sharing in the fees of officers and attorneys of the court; of false swearing; of intoxication on the bench; of gross licentiousness; and numerous other acts improper in a judge. A time for the hearing was fixed; managers were appointed to conduct the trial; and rules of procedure were adopted, when, on March first, the Governor informed the Houses that he had received the resignation of the accused and had accepted it. Further proceedings were thereupon discontinued.

5. **Suits With Baltimore & Ohio Railroad Company for Taxes.**—Since the organization of the State there had been a controversy with the Baltimore and Ohio Railroad Company in regard to the assessment and collection of taxes on the property of the company within the State. The company had refused to pay taxes to the State, as well as to the counties, districts, and municipalities through which its lines ran, or in which its property was situated. Marshall County

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brought a suit against the company for the taxes due the county in 1864, which had been decided in favor of the county by the state courts; but the company carried the suit on appeal into the Supreme Court of the United States. On the advice of counsel Marshall County was about to bring a second suit for the taxes assessed since 1864, when the company obtained an injunction from the circuit court of the United States, forbidding the suit. Chief Justice Chase and Judge Jackson sat together upon the hearing of the injunction and disagreed on the question, whether the United States court had jurisdiction; and the case was certified to the Supreme Court of the United States. The Board of Public Works had been authorized by resolution of the Legislature to settle with the company for the state taxes upon an equitable basis. The State claimed $73,500 which was adjusted by payment of $70,000. Pending a decision of the suits brought by Marshall County the company and the county effected a compromise by which the company paid to the county $25,000, and the suits were dismissed at the costs of the company. This was the beginning of a long series of controversies over the collection of railroad taxes, which resulted finally in the enactment of the present law, which requires all taxes, state, county, district, and municipal, to be paid into the State Treasury and by the Treasurer paid over to the counties, districts, and municipalities entitled thereto. This places the State in position to demand and sue for, if necessary, all railroad taxes, without requiring each county, district, and municipality to bring its own separate suit.

6. **Capital Removed to Charleston (1870).**—On April 1, 1870, in pursuance to an act of the Legislature passed in February, 1869, the Governor caused the books, papers, and other property belonging to the State to be removed from Wheeling to Charleston, where the seat of government had been established. The Bank of the West and the Merchants' Bank, of

Charleston, gave portions of their buildings for the use of state offices until the Capitol should be completed. St. John's Protestant Episcopal Church gave the use of its school room for the State Library. The Capitol building was completed and final delivery made to the state authorities on December 20, 1870, and was immediately occupied by the state officials.

7. **Management of the Public Institutions.**—During the two years of the administration of Governor Stevenson, the branch of the Normal School at West Liberty, and the School for the Deaf and the Blind at Romney, were established; and provision was made for the extension and enlargement of the Normal School at Huntington, the University, the Penitentiary, and the Hospital for the Insane. In general the management of the public institutions seem to have been quiet and satisfactory with the exception of the Penitentiary. At the legislative session of 1869 a joint committee had made an investigation of the affairs of the Penitentiary, and had made a unanimous report containing charges reflecting on the management of the institution, and particularly on the superintendent. At the next annual session another joint committee of three from the Senate and four from the House was raised, to take into consideration the report, and papers accompanying it, filed by the former committee, and was instructed to recommend what legislation or action ought to be taken. Five days later a joint resolution was adopted in the Senate, directing the Board of Public Works, which had the appointing power, to make a change in the superintendent of the Penitentiary. In the following April a new board of directors and a new superintendent were appointed by the Board of Public Works.

During this year Dr. Hills tendered his resignation as superintendent of the Hospital for the Insane, which took effect July 1, 1871. Dr. T. B. Camden was elected in his place; and an entire change in the official staff was made except Dr. A. H. Kunst, the assistant physician.

8. Character of Legislation (1869–1871).—The legislation during Stevenson's term was chiefly of a local or special character, except so far as it related to alterations of the Constitution. During the session of the Legislature held in 1870 William H. H. Flick, who had been an officer in the Union army and now sat as a member of the House from Pendleton County, proposed an amendment restoring the Constitution as it existed prior to the amendment of disfranchisement for giving aid to the rebellion, adopted in 1866. But acceptance by two successive legislatures was necessary before the proposed amendment could go to the people for ratification or rejection. The Legislature of 1871 repassed the proposed amendment and submitted it to a vote of the people. The people ratified it; and by proclamation of the Governor it went into effect on April 27, 1871. This amendment is popularly known as the Flick Amendment.

At the same session a bill was passed submitting to the people of the State the question, whether or not a Convention should be called to change the Constitution of the State. The election was fixed for the fourth Thursday in August, 1871.

9. Condition of the State (1871.).—The population of West Virginia in 1860 was 376,388. The census of 1870 reports the total as 442,032, an increase of 65,644. Of this total 17,945 were colored, of whom upwards of 10,000 were to be found in the counties of Berkeley, Greenbrier, Jefferson, Kanawha, Monroe, and Wood. Only four other counties—Hampshire, Hardy, Harrison, and Mason—contained a colored population exceeding 500.

When it is remembered that during the war period, and for a few years immediately afterward, not all the counties were paying their full assessment of revenue, and some paid none at all, the finances of the State for the bi-annual period ending October 1, 1870, present a very satisfactory showing. There was a balance to the credit of the state fund in the

Treasury amounting to $213,475.58; and the invested school fund in addition amounted to $229,300.

As a means to easy, cheap, and rapid transportation, much attention was given during this time to projects of internal improvement. Governor Stevenson says, in his message (1871): "I cannot too earnestly recommend liberal legislation to public spirited men, who, in good faith, undertake to build railroads, improve our rivers, or inaugurate other enterprises to develop or transport the material wealth of the State."

The great number of county agricultural and mechanical associations organized during this period, as well as county fairs held, give evidence of an increased interest in agriculture and general industry. The agricultural productions during the year 1870 were greater than in any previous year. Statistics collected by the Governor show "in many cases, the surprising increase in the productions of the State." Immigration both from other States and from Europe was encouraged.

10. **Campaign and Election of 1870.**—The state election in October, 1870, was something of a surprise to both Republicans and Democrats. It came with the bitterness of disappointment to the political leaders who had controlled the policy of the Union Republican party, for it presaged the final overthrow of that policy. John J. Jacob, the Democratic candidate, defeated Stevenson by a majority of 2,010 votes; the Democrats had a majority of two in the State Senate and a majority of twenty-four in the House of Delegates, insuring the return of a Democrat to the United States Senate in place of Senator Willey; John J. Davis, Democrat, had defeated General Nathan Goff for Congress in the first District; Frank Hereford, Democrat, had defeated General Witcher in the third; and James C. McGrew, Republican, had been elected over Downey, in the second, by a slender majority. The Flick amendment of enfranchisement had not yet been

adopted. Why then this crushing defeat? The Fifteenth, the last of the series of war amendments to the Constitution of the United States, had taken effect in March, 1870. The attitude of West Virginia during the war had been determined largely by two potent influence: (1) the desire to maintain the integrity of the Union as against Secession; and (2) to secure that local independence in their political and economic administration for which they had been contending for more than half a century. There was little sympathy with the institution of slavery; but the abolition of slavery with them was not a paramount issue. The Thirteenth Amendment abolishing slavery they were willing to accept; the Fourteenth Amendment they perhaps could tolerate as one of necessity for securing the life, liberty and property of the blacks: but the Fifteenth Amendment, which made a voter of the slave, was accumulating reforms too rapidly; the public mind was not yet prepared for it; a reaction took place; and thousands of votes, heretofore cast for the Union Republican party, were now cast for the Democratic candidates. Moreover, there was a general "letting up" in the more stringent features of the requirements for registration of voters, and vast numbers, who had theretofore been disfranchised, voted at this election. These votes went to the Democracy. Jacob posed as a moderate, conservative, and independent candidate. Two years later he was thought not unworthy of the support of independent Republicans as against the regular nominee of the Democratic party.

11. **Election of a United States Senator (1871).**—On February 1, 1871, the Joint Assembly for the election of a United States Senator for the term beginning on the 4 day of March following, to succeed Senator Willey, was convened in the hall of the House of Delegates. In the Senate Henry G. Davis had received fourteen votes and James H. Brown seven; in the House Davis had received thirty-nine votes and Brown fifteen; so Henry G. Davis was declared elected.

CHAPTER XV.

JACOB'S ADMINISTRATION (1871–1877).

1. **Inauguration of State Officers (1871).**—The inauguration of Governor Jacob took place at the front steps of the Capitol in Charleston in the presence of about three hundred persons. He had been welcomed to the capital by a committee of the Legislature and by representatives of the people of Charleston. The administration of the oath of office by Judge Edwin Maxwell of the Supreme Court of Appeals was followed by the qualification of the other executive officers, the inaugural address of the Governor, a spread of champagne and cake in the Senate Chamber furnished by the people of Charleston, and responses to toasts upon call by the retiring as well as the incoming Governor.

2. **Policy of Governor Jacob.**—The Governor's policy, was on the whole, conservative. He approved the Flick amendment in his inaugural address, and was silent on the subject of a convention to change the Constitution. His messages are chiefly directed to the infinite variety of subjects and measures arising in state administration, particularly to the betterment of loosely constructed laws, and the development of the State. He recommended a modification of the delinquent land laws, so as "to protect innocent holders against forfeitures;" stronger supervision by the Auditor over the collectors of taxes; an armory for the University; the repeal of the law permitting corporations to hold and sell real estate for profit; the local regulation and control of education by the State to the exclusion of Federal interference; the improvement of rivers; the organization of a state geological survey.

But his statesmanship in some respects was not broad; he seemed but half awakened from a dream of the utter extinguishment of the reserved rights of the State by the Federal Government.

3. **The Virginia Debt.**—The ordinance of the restored Government of Virginia, providing for the formation of a new State out of a portion of the territory of Virginia, passed by the Convention at Wheeling, August 20, 1861, contained the following provision with respect to the debt of the State of Virginia:

"The new State shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, to be ascertained by charging to it all the expenditures within the limits thereof, and a just proportion of the ordinary expenses of the state government, since any part of said debt was contracted; and deducting therefrom all the monies paid into the treasury of the Commonwealth, from the counties included within the said new State, during the same period."

Upon the organization of the new State the following provision was inserted in the Constitution (1863):

"An equitable proportion of the public debt of the Commonwealth of Virginia, prior to the first day of January in the year one thousand eight hundred and sixty-one, shall be assumed by this State."

No move was made to ascertain the extent of the obligation resting upon West Virginia for seven years, when the initiative was taken by Virginia in the appointment of a commission, on February 17, 1870, to treat with the authorities of this State. The commission appeared in Wheeling during the session of the Legislature of 1870, and upon their representations of a desire to adjust the question, a commission was appointed "to treat with the authorities of the State of Virginia on the subject of a proper adjustment of the public debt of that State," prior to January 1, 1861, "and a fair

division of the property belonging to that State on that day." This resolution, passed in the closing hours of the session, by an oversight failed to carry an appropriation to meet the expenses necessary to be incurred by the commission. For this reason the commission failed to act. But at the next session (1871) a similar resolution was passed, supplying the deficiencies of the resolution of the preceding session. In the meantime Virginia changed her policy as to the *mode* of settlement, and proposed to this State "an arbitration of all matters touching a full and fair apportionment between said States of the public debt," but by arbitrators not citizens of either State; and the arbitrament, when made, was not to be subject to ratification by the Legislature of either State. West Virginia declined the arbitration and appointed her commissioners, and invited Virginia to do the same, under the resolution adopted February 17, 1870. The Governor appointed as commissioners to represent West Virginia, General John J. Jackson, Jonathan M. Bennett, who had been Auditor of Virginia, and Archibald W. Campbell, editor of the Wheeling *Intelligencer*. The Governor of Virginia was informed of the appointment. He replied that while the Virginia resolution proposing arbitration did not in terms repeal the resolution providing for a commission, it was nevertheless "intended to supersede it," and therefore he did not feel authorized to appoint commissioners. No course was left open for the West Virginia commission to pursue, except to take independent action. The commissioners met in Richmond on November 9, 1871. They spent "several days in the examination of such public documents as were available" to them at the Capital, "and realizing the necessity for further and more explicit and official information," they appealed to the Second Auditor. He declined to make the investigations necessary to answer the questions propounded, on account of the amount of work and labor required; but he courteously tendered the books and records of his office for the inspection of the commissioners. They proceeded to ascertain as far

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as possible, from the data accessible to them, the "equitable proportion" of the public debt of Virginia, which West Virginia ought to assume, upon the principle, if not upon the basis, of "the benefits conferred" on the two States by the proceeds of the bonds which represented the debt, and "not territory and population," as was claimed by Judge Meredith and other Virginians who had discussed the subject. Their report shows that the bonded debt of Virginia on January 1, 1861, amounted to $31,778,867.32, which had been incurred in works of public improvement, such as canals, railroads, turnpikes, plankroads, and bridges. Of this sum there was expended in the territory embraced in West Virginia $2,784,-329.29; and from other sources the additional sum of $559,600, making a total expended and invested in West Virginia territory of $3,343,929.29. This sum they found subject to credits, other than those arising from "monies paid into the treasury of the Commonwealth" from taxation in West Virginia, amounting to $2,390,569.06; leaving a balance due Virginia upon this basis of $953,360.23.

The Senate Finance Committee of 1873, of which J. M. Bennett was chairman, states that the true rule of settlement is that prescribed by Virginia herself in the ordinance of August 30, 1861. In a carefully prepared report it shows, that from 1822, when the first part of the bonded debt was created, to 1861, the counties embraced in West Virginia had paid into the treasury of Virginia a surplus, over and above the ordinary expenses of the government, amounting to not less than $3,892,000; leaving a balance of more than half a million in favor of West Virginia, at least totally extinguishing her indebtedness to Virginia upon the basis of the Wheeling ordinance.

In 1871 Virginia passed the "Funding Bill" providing for a settlement with her creditors. They surrendered their old bonds and received in lieu thereof two obligations of Virginia: (1) a bond for two-thirds of the amount surrendered; (2) a certificate for the remaining one-third, signed by the Treasurer

and Second Auditor of Virginia, payment of which was to be "provided for in accordance with such settlement as shall hereafter be had between the States of Virginia and West Virginia in regard to the public debt of the State of Virginia existing at the time of its dismemberment, and the State of Virginia holds said bonds, so far as unfunded, in trust for the holder thereof or his assigns." Such are the words of the certificate. The certificates of 1879 go further: they provide that they shall be "taken and held as a full and absolute release of the State of Virginia from all liability on account of such indebtedness." Those issued under the acts of 1882 and 1892 state that the holder thereof is "without recourse on this Commonwealth." The certificates do nothing more than identify the holders of the "unfunded portion" of Virginia's debt. West Virginia knows no party to this question except the State of Virginia. Why has not Virginia urged a settlement? For more than a quarter of a century she has steadfastly refused to meet commissioners from West Virginia in order to state an account upon the basis of the Wheeling ordinance, or upon any equitable basis. Governor Kemper of Virginia, in his message dated October 5, 1877, says: "If we ever become liable for any part of the debt thus remitted to West Virginia, then it will not be otherwise than by her own voluntary act that Virginia will incur that liability." Whenever Virginia settles with West Virginia, she becomes liable for her certificates issued in 1871. West Virginia has always desired to end this controversy by a settlement upon the only basis that binds her; namely, the Wheeling ordinance. The certificates issued by the State of Virginia have been hawked about the markets of the world as "West Virginia Certificates," when no West Virginia Certificates and no West Virginia bonds exist. This has been done to the injury of her financial reputation, and for a time prevented immigration and the investment of capital. In the meantime in the face of the persistent refusal of Virginia to come to a settlement, West Virginia has pursued unchecked, her career

of progress and prosperity. The people have adopted the view of the question taken by the Senate Finance Committee of 1873, and their motto and notice to the world now is, "West Virginia owes no debt, has no bonds for sale, and asks no credit."

4. **Management of the Public Institutions (1871–1877).**— The Normal Schools had been in a prosperous condition, and had been recognized as a "necessary auxiliary of the school system;" but the Legislature of 1872 left them without any appropriation for the year 1874, although the Governor called attention to the omission in his message to the special session of 1872-73. In doing so Governor Jacob said: "If you should think it advisible not to make any provision for their support in the future, the whole law upon the subject ought to be repealed, and the property belonging to the State disposed of." A few years later another Legislature also failed to make appropriations for them, and the deficiencies in both instances had to be supplied by subsequent appropriations.

The Hospital for the Insane at Weston had always been overcrowded. Temporary relief was afforded in 1872, when room was made for all the patients in the State except a few colored persons. But the congestion again set in, and it was not until the establishment of the Second Hospital at Spencer (1889) that the jails of the State were emptied of lunatics who had been confined there because there was no room for them in the Hospital. During the latter part of the term of Governor Jacob the efficacy of the treatment of patients was severely called into question. For the year ending September 30, 1874, only eight patients, out of nearly 400, had been discharged cured. Long confinement in jails without proper medicine and the overcrowded condition of the Hospital were alleged in explanation of the failure to effect cures.

The School for the Deaf and the Blind is reported as progressing "in a very satisfactory condition," until the resignation of the Principal, combined with other causes, left it in a

disorganized condition (1873). The Governor reorganized the board, "because their policy had not produced the best results." The immediate improvement in the condition of the institution justified the wisdom of his course.

The University held "on its way not only with unabated energy, but with still continued and increasing success." The Governor said: "It is a cause of gratulation that our University has escaped the ill-starred fate of many similar institutions, and that it is gradually winning its way into public favor." But he opposed the establishment of departments for teaching law and anatomy.

5. **Character of Legislation (1871-1877).**—The most important legislation of the time was the adoption of a new Constitution and the passage of numerous acts to bring the statute law into harmony with the new Constitution. The election held on the fourth Thursday in August, 1871, resulted in a majority in favor of a call for a Constitutional Convention. The election of delegates took place in October following, at which as many delegates were chosen as there were members of the Legislature, and from the same counties and districts. The Democratic party at this time embraced all the reactionary elements precipitated by the Civil War, the Thirteenth, Fourteenth, and Fifteenth Amendments to the Constitution of the United States, registration, disfranchisement, dissatisfaction with political and administrative conditions, and disappointed political ambition. The August election sounded the death knell of the ultra Union Republican party: it gave up; it never was returned to power until a new generation arose, and new blood was infused into it a quarter of a century later. The Democrats elected 66 and the Republicans 12 members of the Convention. The Convention met in the old Methodist Episcopal Church in Charleston, and was in session eighty-four days. It was, perhaps, the most notable body of men, in point of legal ability, that ever met in the State. There were 34 lawyers; 20 farmers; 17 business men; 5 physicians; 1 min-

ister; and 1 college professor. Samuel Price, Lieutenant Governor of Virginia during the Confederacy, was President. On the Democratic side sat Alpheus F. Haymond, Homer A. Holt, Okey Johnson, and Samuel Woods, all of whom became judges of the Supreme Court of Appeals; Charles James Faulkner, who had been a member of the House of Representatives, a minister to France, and an aide on Stonewall Jackson's staff: B. W. Byrne, and President W. K. Pendleton of Bethany, both of whom became State Superintendents of Free Schools; Henry M. Mathews, afterwards Governor; William G. Brown, John Bassel, John Blair Hoge, James M. Jackson, Edward B. Knight, Benjamin F. Martin, William H. Travers, George H. Moffett, and Benjamin Wilson, all of them lawyers of eminent ability; and many others of note. The one conspicuous figure on the side of the minority was Waitman T. Willey, whose term in the United States Senate had expired the year before. Along with him sat his son-in-law Judge J. Marshall Hagans, D. D. T. Farnsworth, who had been President of the Senate and Acting Governor, James M. Pipes, ex-Secretary of State, James S. Wheat and George O. Davenport of Ohio County, and the rest of the little band of the minority.

The Constitution was submitted to the people in August, 1872, and received a majority of 4,567. It was essentially a lawyers' Constitution. It cost the State about $361,000. It has proven a most unsatisfactory instrument of government. Clamor against it from the day of its submission to the present time has never ceased, and doubtless will not cease until a new instrument takes its place free from the inhibitions which this one places in the way of just legislations.

6. Conditions of the State (1871-1877).—In 1872 the Chief Executive communicated to the Legislature that the people are contented and prosperous; that the attention of capital is directed to our large and undeveloped resources; and that we are beginning to feel the inspiring breath of commerce, and are awakening into a new life as people under its influence.

A review of the social and material conditions of the State at the time afforded abundant reason for profound satisfaction at the condition of progress. But when the Legislature of 1875 assembled, the great panic of 1873 had fallen upon the country. Widespread financial depression and hard times followed; but the people of West Virginia were spared the destitution and distress that visited some sections of the country. They had an abundant supply of the necessaries of life.

7. Election of 1872.—The year 1871 seemed to threaten the disruption of all political parties. There were seven presidential candidates. It was the era of the breaking up of old issues arising out of the war and the formation of new ones. The Democratic State Convention met in Parkersburg. The candidates for the gubernatorial nomination, up to this time, had been Governor Jacob and Johnson N. Camden. The feeling between the Jacob and Camden men was worked up to a high pitch. Henry S. Walker offered a resolution, aimed at Jacob of course, that all candidates pledge themselves to abide by the decision of the convention. This was tabled on a point of order pending permanent organization; but it was not again offered. It became apparent at the preliminary meetings, preceding permanent organization, that the Camden men had full control of the convention. It was said that "ring methods" had been used to gain control. What would Jacob do? It was rumored that he had withdrawn his candidacy. It was suggested that he be nominated for the supreme bench. It now became apparent that Jacob declined to allow his name go before the convention for any office. Camden was nominated by acclamation; but there were mutterings of dissent that foreboded dissension. It was said that Jacob could get the solid Republican vote on an independent ticket. Had he the nerve to strike? and had he the bold and decisive qualities which make successful leaders? were questions frequently asked in this hour. In the course of the next few days following the convention, strong appeals from all sections

of the State came to him urging him to announce himself as an independent candidate. He did so on the 25 day of June. "Independent of what?" asked the Clarksburg *Sun*. "He is independent of all rings, cliques, or sets of politicians who undertake to rule the State," answered the *True Democrat*. "Camden Democracy *vs*. The People: that's the question at issue," says a contemporary journal.

The Republican party made no nomination; but by a concert of action between the dissenting Democrats and the Republicans an independent ticket was made up, composed entirely of Democrats, except that Berkshire and Maxwell were named as two of the judges for the Supreme Court. The campaign was characterized by the most caustic personal abuse. Jacob was reelected by a majority of 2,363 votes; but all the other candidates on the People's Independent Ticket were defeated by majorities approximating 20,000. B. W. Byrne became Superintendent of Free Schools; Edward A. Bennett, Auditor; John S. Burdett, Treasurer; and Henry M. Mathews, Attorney General.

8. Election of 1876.—As their candidate for Governor in 1876 the Republicans nominated General Nathan Goff. The Democratic candidate was Henry M. Mathews. Goff had been a General in the Union army, Mathews a Confederate Major. Seven out of eight candidates on the Democratic state ticket had either served in the Confederate army or had openly sympathized with the Confederate cause; the eighth man was a Union Democrat. During the campaign there was a vigorous waving of the "bloody shirt." The Republicans tried to taunt the Democrats who had espoused the Union cause during the war, by telling them that they were only voters, that they were not eligible to office. The old war spirit was aroused and violent scenes were once more enacted in some localities. The Democratic leader Mathew was a good, clean, upright young man, who had accepted candidly the results of the war; but Goff was magnetic, and had a per-

sonal popularity that was hard to resist. In the election while Goff ran ahead of his ticket nearly three thousand votes, the remainder of the Democratic ticket was elected by majorities ranging between 15,000 and 16,000.

9. **Election of United States Senators (1875 1877.)**—The Legislature met in Joint Assembly on January 27, 1875, to elect a successor to Senator Boreman. Fifteen candidates were voted for on first ballot, resulting in no choice, with Henry S. Walker and Johnson N. Camden in the lead. Twenty-three ballots were taken. Okey Johnson, Samuel Price, John Brannon, and others, developed at times a strong vote, but all fell short of a majority. On the final ballot Allen T. Caperton received a majority and was declared elected. Caperton died in Washington, July 26, 1876, and the Governor appointed Samuel Price to fill the vacancy until the next meeting of the Legislature. The Legislature of 1877 had, therefore, two Senators to elect. Forty-five votes were necessary to elect. Henry G. Davis, who had been a Union Democrat, received thirty votes for the full term, but his leading opponent was Charles James Faulkner, who had been a Confederate officer on Stonewall Jackson's staff. Frank Hereford, who had been a Union soldier, received, for the unexpired term, twenty-six votes, and Samuel Price, an official under the Confederacy, received the same number. The Republicans had not the power to elect one of their own party. In both cases after the votes had been taken in Joint Assembly, but before an announcement had been made, they began changing their votes one after another, until Davis's vote was swelled to sixty, and Hereford's to seventy, thus deciding the election in favor of men who had been loyal to the Union cause. The incident illustrated the extent to which the war feeling still entered into the question of elections.

10. **Impeachment of the Auditor and Treasurer (1875-1876.)**—In 1875 the House of Delegates ordered articles of impeachment against John S. Burdett, Treasurer, and Edward A.

Bennett, Auditor, for malfeasance and corruption in office. J. Hanson Good and six others were appointed managers. James Morrow, jr., W. W. Arnett, and George O. Davenport, appeared for the defendants. The trial took place before the Senate sitting as a Court of Impeachment. The Treasurer was found guilty upon certain articles and was dismissed from office. The Auditor was acquitted, although upon one article the vote stood fifteen for guilty to nine for acquittal, being one vote less than two-thirds required for conviction. These are the only cases of impeachment tried before a West Virginia Senate.

CHAPTER XVI.

MATHEWS'S ADMINISTRATION (1877–1881).

1. **Inauguration of State Officers.**—A program for the inauguration of the executive officers was arranged by a joint committee of the Legislature. The citizens of Wheeling, irrespective of party, seconded the efforts of the committee. At twelve o'clock, noon, on Monday, March 5, 1877, in the presence of a large audience at the west front of the Capitol, Governor Jacob introduced Henry Mason Mathews, the Governor elect, who delivered his inaugural address. Judge Haymond of the Supreme Court administered the oath of office. In the evening a reception was held in the Capitol, a grand inaugural ball took place, and an elaborate feast was served to the multitudes in attendance. It seemed that the asperities of the campaign were forgotten amid that scene of flowers and flags and banners and music, of feasting and revelry. The Morgantown *Post*, a Republican journal, in speaking of the inaugural address of Governor Mathews, says, editorially: "We have a broad, manly, and liberal address, which possesses, to our mind, an honesty of purpose, and a freedom from disguise, that is truly refreshing. .. .. The skies are brightening all around, and argue well for a long lease of the best fraternal feeling."

2. **Policy of Governor Mathews.**—Mathews sought the support and encouragement of the wise and patriotic of all parties. He desired perfect peace, that feud and strife might cease. He rejoiced in the renewal of good feeling, and the acceptance, in good faith, of the results of the war. "Let the dead past bury its dead," he said; "and with reorganized forces move up to the living issues of the present."

3. **Management of Public Institutions (1877-1881).**—Mathews adopted the sensible and liberal policy of appointing boards for the administration of the affairs of the state institutions, composed of men from both political parties. Results fully justified the wisdom of his course. No committee to investigate any alleged scandal or mismanagement was appointed during his term. The affairs of these institutions were generally administered with economy and efficiency. The opportunity for assailing an institution for political effect is practically neutralized by a bi-partisan board. But the wise policy of Mathews was not followed by his successors during some years, when boards composed of representatives of the dominant party alone administered the affairs of these institutions. The unwisdom of partisan control has at last been forced home to the minds of the people. Statutes now require Governors to appoint these boards so as to give both parties representation on them.

4. **Great Railroad Strike of 1877.**—A strike was started at Martinsburg on the morning of July 16, 1877, by the firemen on the freight engines of the Baltimore and Ohio Railroad. It extended until not only the whole B. & O. system was involved, but many other trunk lines as well. The sum total of the disturbance was that nearly a hundred firemen, and a few others, in the employ of the company, remonstrated against a reduction of ten per centum in their wages. They left their engines; the company undertook to put new men in their places; the strikers used threats and intimidation. The storm center in West Virginia was Martinsburg, with conditions at Keyser, Piedmont, and Grafton threatening outbreak at any moment. The civil authorities were soon rendered powerless. There were in the State at this time but three volunteer military companies, the Berkeley Light Infantry stationed at Martinsburg, under command of Captain Charles James Faulkner, who was also a colonel and aide on the Governor's staff; the Mathews

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Light Guards, stationed at Wheeling, under command of Captain W. W. Miller, which had but recently been organized; and a company at Moorefield, which had not yet been supplied with arms, under command of Captain J. Chipley. Captain Faulkner's company was ordered out, and the Mathews Light Guards were ordered to reenforce them. The railroad yard was blocked with freight trains: Martinsburg was the end of a division, where a large part of the shops of the company was then located. Captain Faulkner undertook to move a train with a new engineer and fireman; a volunteer attempted to open a switch; the mob fired upon him and wounded him; the military returned the fire, mortally wounding one of the mob; the engineer and fireman quit the train. Captain Faulkner informed the Governor that the force at his command was not able to cope with the formidable opposition. Colonel Delaplain, an aide-de-camp, was sent out. He reported that the military force of the State was "entirely too small to suppress the riot," and that "any attempt to do so would be attended with disastrous results." The miners in the vicinity of Piedmont were threatening a sympathetic strike. Great excitement and unrest prevailed at Piedmont, Sir John's Run, Keyser, and Grafton. Under these circumstances the Governor asked for Federal troops. A force numbering in all three hundred and thirty-two men was ordered out from the arsenal in Washington and from Fort McHenry near Baltimore, under command of General French, on the 18 of July. Their presence overawed the rioters. Two days later Colonel Delaplain reported to the Governor that the riot was suppressed, and that the sheriff was making arrests without difficulty supported by a detachment of the state troops. The blockade of trains was opened and traffic resumed; but both state and Federal troops were retained for some time at the most threatening points. It seems that the leaders in the disturbances were not natives of West Virginia, but adventurers, who sought to involve in their schemes laboring men who were irritated by what they considered illiberal

usage on the part of their employers. The ease with which law and order was reestablished in this State, contrasts strongly with the scenes of violence and bloodshed that were enacted in other places, particularly in Pittsburg, where for a time the wanton distruction of property and human life, enacted during the French Revolution, found a parallel.

5. **Riot at Ansted.**—On January 8, 1880, a number of miners at some of the mines on the Chesapeake and Ohio Railway ceased work, assembled in force, proposed to compel the miners at Ansted to abandon work and join them, and threatened injury to persons and destruction of property. The sheriff of Fayette County became alarmed, and asked for fifteen hundred soldiers to preserve the peace and execute the law. The Governor responded by sending one battalion under command of Major J. W. M. Appleton. The leaders were arrested and order was promptly restored.

6. **Constitutional Amendments and Legislation.**—The Legislature of 1879 proposed two amendments to the Constitution. The first was an entire revision of Article VIII, increasing the number of circuit courts from nine to thirteen; increasing the number of terms in each county from two to three; giving the State the right to appeal in revenue cases; abolishing the antiquated county court and substituting in its place a police and fiscal board of three commissioners for the administration of county affairs alone, without law or equity jurisdiction; and other changes of minor character. The second amendment related to section thirteen of Article III, and provided for trial by a jury of six in cases before the justice of the peace. Both amendments were ratified at the election held in 1880. The most important legislation of the session following their adoption was the act passed in the effort to adjust the statute law to the changes made in the Constitution. The Governor recommended an entire revision and codification of the laws; but his advice was not heeded.

7. **United States Senator Chosen.**—At the session of 1881 Johnson N. Camden was elected a United States Senator to succeed Hereford. The Republican members numbered only twenty out of a total of eighty-six; and their votes were cast as a compliment to Archibald W. Campbell.

8. **Condition of the State (1877–1881).**—During this administration the country at large recovered, in a great measure, from the financial distress of the four preceding years. The people were healthy, industrious, law-abiding, and patriotic; the crops were usually abundant; taxes were paid with unusual ease and creditable punctuality; the public institutions were administered with great economy; there were fewer failures in business than in any other State of equal area and population; new mines were opened; manufactures increased both in number and variety; the forests interested experienced lumbermen; the attention of colonists was directed to the unimproved lands of the interior; the building of railroads kept abreast of the march of progress; and the population increased in a greater ratio than in any other State east of the Mississippi, except two.

9. **Election of 1880.**—The era of good feeling that prevailed during the administration of the liberal-minded Mathews, received a backset during the campaign of 1880. Jacob B. Jackson, the Democratic candidate for Governor, in a speech at Fairmont preceding his nomination, unfortunately let slip some words which were construed by his political enemies as utterances of hate to the Republican party, and his intention to bequeath that hatred as a legacy to his children. These remarks, doubtless intended to make Democrats love him more, were seized upon as campaign material, and were kept displayed in prominent type from week to week, during the campaign, in many of the Republican journals. George C. Sturgiss was the Republican nominee. The national candidates on the opposing tickets were Garfield and Hancock. The campaign throughout the United States was characterized

by slanderous, reports, personal scandal, forgeries, and personal abuse. In this State an appeal was made to every sentiment that could arouse partisan feeling. The old sores of the war were torn open and bled afresh. Jackson was elected by a plurality of 16,139 over Sturgiss, and a majority of 3,112 over both Sturgiss and French, the Greenback candidate. Sturgiss ran ahead of his ticket from 500 to 1000 votes over the other candidates. Joseph S. Miller was elected Auditor; Thomas O'Brien, Treasurer; Bernard L. Butcher, State Superintendent of Free Schools; and C. C. Watt, Attorney General.

CHAPTER XVII.

JACKSON'S ADMINISTRATION (1881-1885).

1. **Inauguration of State Officers.**—Governor Jackson and the rest of the executive officers were inducted into office on March 4, 1881. The ceremonies were much the same and quite as elaborate as those attending the qualification of his predecessor, with the additional feature of a parade carried out with much pomp. The inaugural address, both in tone and spirit, contrasts sharply with that of his predecessor. Mathews and Jackson represented different types of men. Jackson was a partisan and could not easily lay aside his prejudices; but back of it all lay a vigorous manhood and an unquestioned honesty, characteristic of the "old school" in which he had received his training.

2. **Policy of Governor Jackson.**—Jackson expressed the opinion that "to open the mines of wealth;" to cut down and saw up the forests; and to utilize our generous soil, under our salubrious climate, for "raising most of the agricultural products," were the essentials necessary "to make our State one of the most prosperous of the Union." He recommended the enactment of salutary laws, as an inducement to immigration and the development of manufactures, and as a means of increasing our wealth and influence. He endorsed a revision of the laws so as to reconcile the "seeming repugnancy in many of the statutes, and to make certain what the law is." He insisted that the incurables in the asylum should be a charge upon the counties from which they come and not upon the State. He pointed out the unwisdom of failing to make

appropriations to the Normal Schools during the session of 1879, and urged that regular appropriations should thereafter be made. He proposed the abolition of the offices of President and Vice President of the University, and objected to the enlargement of the professional schools so as to enable the institution to graduate students in either law or medicine, under the belief that conditions did not justify the innovation. By 1885 he had modified his notion, and said: "It should be made in fact what it is in name"—a University; and he favored coeducation. He recommended appropriations to render the work of the State Board of Health and the Commissioners of Pharmacy efficient, and the enactment of laws to prevent the vending of fraudulent land titles in this State by speculators in eastern cities. He called attention, repeatedly, to the unorganized condition of the militia, and urged the passage of proper laws for the enlistment of a volunteer force that would be able to preserve the peace and enforce the laws, without the necessity of calling on the Federal Government in cases of domestic disturbance.

3. **Management of Public Institutions.**—In 1883 the Hospital for the Insane for the first time afforded accommodations for all entitled to admission therein; but in a short time it was again overcrowded, and the old question presented itself, What shall be done with our insane? Based upon charges made by the Clarksburg *Telegram*, a joint committee was appointed (1882) to visit the asylum and examine into the charges and the sanitary condition and general management of the institution.

The School for the Deaf and the Blind was also overcrowded and new buildings were called for. No provision was made to meet the expenses voluntarily incurred in keeping the Normal Schools in operation after the failure of the Legislature of 1879 to make an appropriation for their support, although the Governor repeatedly urged the justice of such an appropriation.

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4. **Riot at Cannelton.**—In November, 1881, the sheriff of Fayette County reported to the Governor that a riotous combination existed at Cannelton, with which he was unable to cope, and asked for troops. Two companies were sent to him under command of Captains Alderson and Lowry. The military remained on duty only a few days during which time order was restored.

5. **Assessment of Property for Taxation.**—The population of the State from 1870 to 1880 increased nearly forty per centum; and the net gain in the aggregate valuation of real and personal property, from 1871 to 1881, was a little over five per centum. Had the new farms, the mines, the timber, the railroads added nothing to the wealth of the State? Clearly personal property was not listed for taxation to the proper extent. The Constitution fixed the exemption list; but the Legislature had exempted classes of property in the face of the Constitution. The Governor undertook to see "that the laws be faithfully executed," and that all property not exempted by the Constitution should be listed for taxation. At his instance the Auditor issued instructions to this effect to the assessors. A number of assessors ignored the order. A test case was made against the assessor in Brooke County, by a proceeding in the Supreme Court by *mandamus* to compel him to obey the Auditor's instructions. The court sustained the Auditor. The policy of the Executive was attacked. The question found its way into politics. A full discussion ensued. As a result of the public agitation in the course of three years, instead of a continued decrease, there was an increase of upwards of $8,000,000 added to the tax lists of the State.

6. **The Tax Commission.**—During the early agitation of this subject (1883) an act was passed for the appointment of a commission of three, not more than two from the same political party, to investigate (1) the subject of taxation in the State; (2) the facts necessary to enable the Legislature to give effect to Article X of the Constitution, in relation to taxation

and finance; (3) to report information for intelligent legislation to advance the development of the resources of the State; and (4) to report what economies can be introduced into the management of state affairs. The commission made elaborate reports, containing much matter relating to the subject; but it did not submit any bill to remedy the difficulties. No practical results were achieved from the work of the commission.

7. Character of Legislation Adopted.—An amendment to the Constitution was adopted changing the time of the state election so as to coincide with the day on which Federal elections are held, namely, the Tuesday next after the first Monday in November.

A joint committee of the Legislature was appointed at the regular session of 1881, to sit during the recess, and to prepare such bills as may be necessary for a complete revision of the laws, preparatory to the publication of a new edition of the Code. An adjourned session was held the following year, at which many revised bills were passed. An act was also passed reapportioning representation in the Senate and House of Delegates, and redistricting the State for Representatives in the Congress.

8. United States Senator Chosen.—John E. Kenna, having received a majority of all the votes cast by each house voting separately, was declared elected a Senator of the United States by the Joint Assembly, on January 24, 1883, as the successor of Henry G. Davis. The Republicans voted for Judge George Loomis and the Greenbackers for John T. Janney.

9. Condition of the State (1881-1885).—As a rule the harvests were bountiful; industries were in a satisfactory condition; capital was seeking investment; new lines of railroad were building. One great calamity, however, fell upon the Ohio Valley in 1884. A deep snow lay upon the ground; warm breezes sprang up and a gradual thaw set in; a long continued rainfall followed; and the great flood swept over the

low lands along the Ohio. High water mark at Wheeling reached fifty-three feet, and at the mouth of the Great Kanawha, fifty-seven feet, on February 11, 1884. Much damage was done, and there was great suffering and distress by thousands whose homes were flooded, which was relieved by kindly charity both at home and abroad. By a judicious frugality prosperity once more prevailed, after a time, and the valley again yielded its abundant harvest.

10. Election of 1884.—By 1884 the Republicans and Greenbackers had effected a fusion, and nominated Edwin Maxwell, who had been a judge of the Supreme Court, for Governor; J. H. Burt for Auditor; Spencer W. Sturm for Treasurer; J. N. Kendall for State Superintendent of Free Schools; and John A. Hutchinson for Attorney General. The Democrats nominated E. Willis Wilson, who had been Speaker of the House of Delegates, for Governor; Patrick F. Duffey for Auditor; William T. Thompson for Treasurer; Benjamin S. Morgan for State Superintendent of Free Schools; and Alfred Caldwell for Attorney General. The campaign was freer from partisan cant than in former times, and there was a disposition to discuss political issues upon their merits. The Democratic candidates were elected by majorities varying between 5,000 and 6,000. The Governor received a majority of 5,289 out of a total vote of 137,587.

CHAPTER XVIII.

WILSON'S ADMINISTRATION (1885-1890).

1. **Inauguration of State Officers.**—The inauguration of Governor Wilson and the rest of the executive officers took place in Wheeling on March 5, 1885. It was an event of a very quiet nature, notwithstanding there was a parade, an inaugural address, a reception, a society ball, and a supper. The oath of office was administered by President Judge Okey Johnson of the Supreme Court of Appeals. The Governor's inaugural was free from partisanship, and there was nothing in it to which any one could take serious objections, except the utterances in regard to railroad monopolies, which foreshadowed his policy on railroad legislation. On the same day Grover Cleveland, the first Democratic president during a quarter of a century, was inaugurated at Washington.

2. **Policy of Wilson.**—Governor Wilson pointed out that the revenue laws did not secure equality of taxation as contemplated by the Constitution, and that the species of property best able to contribute, evaded the assessor. He suggested such revision as would place the "untaxed invisible personal property" on the assessors' books. He proposed legislation to regulate the costs, charges, and proceedings in criminal cases; to prohibit railroads from issuing free passes to state officials, and delegates to political conventions, and to prohibit also the granting of special fares to them not granted to other passengers; to prohibit "trusts, combinations, and conspiracies to oppress the people and enrich the few," and to reform the election laws. He took up the question of discrim-

inations against the people of this State, in freight and passenger charges, by the trunk line roads passing through the State. He said: "Railroad companies are chartered, and the right of eminent domain is conferred upon them, by and for the benefit of the State granting the charter. It can not be conceived .. .. that powers were thereby created permitting discriminations between citizens of the same State, or against them in favor of citizens of other States. .. .. Discrimination is a public evil. .. .. There is not a western State but ships its stock, farm products, and manufactured articles to the Atlantic cities from twenty-five to fifty per cent less, for the same amount of freight, than is exacted from the West Virginia shipper to the same destination; while a like character of discrimination is enforced as between citizens and localities of our own State." These remarks reveal the real character of the quarrel, at the time, between the people and the railroads. The war waged upon this question by the Wilson administration was fierce and relentless. A special session of the Legislature was called to consider, among other things, the regulation of freight and passenger tariffs. Mr. Chew of Jefferson introduced the bill for the purpose. It reached its second reading. There seemed to be a decisive majority in its favor. The opposition attacked it with amendments, and amendments to amendments. One of the most interesting parliamentary tilts ever carried on in a Legislature was on hands. In the midst of it all the President of the Senate (Mr. George E. Price) appeared at the bar and announced the concurrence by the Senate in a House Joint Resolution "Approving the passage by Congress of the Interstate Commerce Bill." There was a lull, but the fight was resumed. At last on a question of amendment the vote stood nineteen to nineteen, with twenty-seven *absent and not voting*. Further action was postponed until five o'clock; shortly after the House took a recess until seven thirty: but the consideration of the bill was never resumed. It was thought to be

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prudent to await the experiment of the operation of the Inter-state Commerce law.

In 1889 Governor Wilson said: "The Inter-state Commerce Law has been in effect about two years, and experience has demonstrated the wisdom of the act. .. .. Our shippers have received great benefit under the operation of the law." But he insisted upon a State Commerce Commission to file and prosecute complaints for the correction of abuses before the Federal Commission, and to have control of the regulation of domestic commerce. No law was passed with this end in view.

3. **Settlement of the West Virginia and Pennsylvania Boundary.**—In 1885 a joint boundary commission, appointed by the States of Pennsylvania and West Virginia, began the work of resurveying and marking by suitable permanent monuments, the boundary between the two States. When the work was completed a report thereof was submitted to the Legislatures of the two States, which was accepted and confirmed, thus setting at rest a long dispute. The original report, together with the field notes, and detail maps and drawings, showing every point, is filed in the office of the Secretary of State. A number of copies were printed and distributed for public information.

4. **Management of the Public Institutions.**—The boards of control of all the state institutions were still in the hands of men identified with the dominant political party to the exclusion of the minority. Nevertheless the general management seems to have been progressive and businesslike, and generally free from offensive partisanship.

6. **United States Senator Chosen.**—The Legislature of 1887 adjourned the regular session without electing a United States Senator to succeed Senator Camden, whose term expired on March 4 of that year, and without passing any appropriation bills. The Joint Assembly took thirty-five ballots for Sena-

tor during the regular session. Mr. Camden had more votes than any other Democrat, but a sufficient number of his own party refused to vote for him and prevented his election; and the Republicans had not votes enough to elect. Upon the adjournment of the regular session Governor Wilson appointed Daniel B. Lucas to fill the vacancy. The Constitution of the United States says that the Governor may fill a vacancy occurring during a recess of the Legislature, "until the next meeting of the Legislature, which shall then fill such vacancy." The Constitution of West Virginia says, that when convened in extra session, the Legislature "shall enter upon no business except that stated in the proclamation by which it was called together." The failure to pass an appropriation bill made it imperative to call an extra session. The vacancy was filled. Could the Legislature elect unless that subject were included in the proclamation? The Governor thought not. So the election of a United States Senator was not mentioned in the proclamation. Notwithstanding, the Legislature met in Joint Assembly, and on the eighth ballot elected Charles J. Faulkner. Upon a contest the United States Senate decided that Mr. Faulkner was entitled to the seat.

6. Election of 1888.—The election of 1888 resulted in a close vote between the candidates of the principal parties. General Nathan Goff was the nominee of the Republican party for Governor, and Judge A. Brooks Fleming, of the Democratic party. The other Democratic candidates for the executive offices were the same as in 1884, and were elected by pluralities ranging from one hundred and sixty-seven for Attorney General to eight hundred and forty-nine for State Superintendent of Free Schools. But Goff, with his usual good fortune in politics, ran ahead of his party ticket, and on the face of the returns, as the vote was certified by the canvassers to the Secretary of State, had 78,714 votes to 78,604 for Fleming. A notice of contest was filed by Fleming alleging illegal votes cast for his competitor. Goff filed a counter

notice specifying lists of illegal votes cast for Fleming. When the Legislature met to declare the vote for state officers, a joint committee was appointed in pursuance of law, consisting of two from the Senate and three from the House to consider the contest, and with power to sit during the recess of the Legislature. The Senate was Republican and appointed two Republicans on the committee; the House was Democratic and appointed three Democrats. The Legislature in Joint Assembly had a small Democratic majority. In the meantime Governor Wilson continued to act as the State's Executive. He called the Legislature in extra session on January 15, 1890. The Joint Committee on the contest presented a majority and a minority report. The majority report, signed by the Democratic members only, counts 78,697 votes for Fleming and 78,460 for Goff, a plurality of 237 for Fleming. The minority report, signed by the Republican members alone, counts 78,792 votes for Goff and 78,652 for Fleming, a plurality of 140 for Goff. Finally a resolution was offered in the Joint Assembly declaring Fleming duly elected to the office of Governor of the State, which was adopted by a strictly party vote of 43 Democrats to 40 Republicans, on February 4, 1890. The report of the Joint Committee on the contest was not acted upon. The Legislature continued in session until the 26 of the same month, when it adjourned.

CHAPTER XIX.

FLEMING'S ADMINISTRATION (1890-1893).

1. **Inauguration of Governor Fleming.**—All the other executive officers of the State, except the Governor, having been reelected, took the oaths of office and continued in the discharge of their duties. Governor Wilson continued beyond the expiration of his regular term from March 4, 1889, until February 6, 1890, when Governor Fleming was inaugurated. The ceremony passed off quietly, followed in the evening by the usual society functions of a reception and ball.

2 **Policy of Governor Fleming.**—Among the more important matters endorsed and recommended by Governor Fleming are the following: a revision of the election laws of the State modeled after the Australian ballot system; taxation of the property of the Pullman Palace Car Company, in use in the State; taxation of cars operated in the State belonging to foreign car trust companies; taxation of the business of foreign telegraph companies so as to reach business originating in the State whether its destination was in or out of the State; limitation of the school fund (the permanent invested fund), and distribution in the future of the revenue now going to swell this fund; thorough supervision of state banks; reasonable appropriations to organize the military force of the State upon a footing of general efficiency; and, in general, a policy of legislation tending to diversify industry, to preserve the State's resources from monopoly, to foster agricultural interests, and to strengthen our institutions of learning.

3. **Management of Public Institutions.**—The public institutions still continued under the control of strictly partisan

boards. They were, however, as a rule, liberally supported by appropriations. There is a notable absence of clamor concerning their management, which is usually a strong evidence of good management and increasing usefulness to the State. It is the ironical side of human nature that we seek for faults, for weaknesses, and finding them magnify them and condemn them; we rarely commend.

4. **Hatfield-McCoy Feud.**—For some years a feud had existed between the Hatfields and their friends on the West Virginia side of the Big Sandy River, and the McCoys and their followers on the Kentucky side. Fatal conflicts had taken place, resulting in the death of a number of parties on each side. Rewards had been offered in Kentucky for the arrest of some of the Hatfields, who were there charged with crime, and rewards had been offered by West Virginia for the arrest of some of the McCoys, who were charged with crime in this State. The offer of these rewards served no other purpose than to excite the parties to fresh deeds of violence. Newspaper correspondents, who manufactured and furnished sensational items at so much a line, magnified every occurrence, until one would imagine, from reading some of the city journals, that West Virginia was a region infested with outlaws and assassins. Frequently the shadow of crime was thrown upon law-abiding citizens and communities. Governor Fleming withdrew the rewards offered by West Virginia, and informed the officials of Kentucky of his action. The wisdom of his course was apparent, when, shortly afterward, infractions of the law, attributable to the feuds, ceased in that portion of the State.

5. **Records Obtained From Virginia**—The records of the original grants of land in West Virginia, together with a number of valuable books, documents, and papers relating to land titles in this State, prior to its formation, were to be found in the offices of the Auditor and Register of the Land Office in Richmond. It was of the most vital importance that the

State should possess these records, or copies of them. But before this could be done it would be necessary to procure the passage of an act by the Legislature of Virginia giving the necessary authority. Governor Fleming undertook this work in the interest of his State. He first went to Richmond and obtained from the Governor and other state officials an expression of their approval of his request. He caused the necessary bills to be prepared and despatched Colonel B. W. Byrne as the agent of the State of West Virginia to go to Richmond during the session of the Legislature there and look after the passage of the desired act. He made two trips himself to Richmond to reinforce the work of Byrne, during one of which he induced Governor McKinney to recommend the desired legislation in his message, and during the other conferred with prominent members in both Houses and enlisted their cooperation. As a result the bill was passed and became a law; and in pursuance of its provisions West Virginia now has in the office of the Auditor all the books, records, documents, and papers, or copies of them, relating to the land titles of the State, so far as they are in existence. The original records; when they related entirely to counties in West Virginia, were transferred. Whenever it was possible, a book pertaining to records in both States was taken apart, and the portions relating to West Virginia removed, and the remainder of the book rebound. In other cases copies were made from the originals. There has been expended in the undertaking upwards of $16,000, under Governor Fleming and his succssor Governor MacCorkle. Governor Fleming himself prepared the bill, and submitted it with his message, making these books, records, documents, and papers, and the copies thereof, parts of the public records of the State, and that authenticated copies thereof should be received as evidence in all cases where the originals could be used as evidence. The procurement of these records was a delicate and difficult undertaking, requiring a thorough knowledge of the subject, diplomacy in dealing with public officials and legislatures,

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and perseverance. In carrying this work through to the point of insuring its completion, Governor Fleming has done his State a service that is not outweighed by any other act of his administration.

6. Suit of Maryland vs. West Virginia.—There is now pending in the Supreme Court of the United States a suit brought by the State of Maryland against West Virginia to settle a question of land title between the two States. The charter of Maryland granted to Lord Baltimore fixes the southern point of the western boundary between Maryland and Virginia as the "first fountain of the Potomac," and the western boundary as the "meridian of the first fountain of the Potomac." Commissioners of the Crown of Great Britain determined that the North Branch was the true continuation of the Potomac, and marked the point and planted the corner-stone, which has become famous as the "Fairfax Stone." The report of the commissioners was confirmed by the King. This stone stands at the southwest corner of Garrett County, Maryland, at the point where it touches Tucker and Preston counties in West Virginia. The western boundary of Maryland is the meridian of longitude passing through the point known as the "Fairfax Stone." Maryland has maintained a fugitive sort of claim to the South Branch as the true line; Virginia and West Virginia have held to the North Branch for more than one hundred and fifty years. This suit involves two phases: (1) If the head fountain of the South Branch is the true southwest corner of Maryland, then the portion of the counties of Hampshire, Hardy, Grant, and Pendleton, lying west of the South Branch, all of Mineral County, and the parts of Randolph, Tucker, and Preston, lying east of the meridian of this new head fountain, are in Maryland, thus almost, if not completely, cutting the State of West Virginia in two parts; and (2) conceding the Fairfax Stone to be properly located, which Maryland denies, that State lays claim to a triangle of territory with a base of three quarters of a mile

on the Pennsylvania line and an apex resting at the Fairfax Stone.

West Virginia has thus been obliged to employ counsel to defend her interests in this suit, which was done by Governor Fleming with the sanction of the Legislature. Maryland proposed arbitration after suit was brought; but this State seems disposed now to let the court settle the questions raised.

7. **Executive Mansion.**—Upon the recommendation of Governor Fleming a commission was appointed to procure suitable grounds and buildings for the occupancy and use of the Chief Executive, and $23,660 was appropriated to meet the expense. Additional purchases of ground have been made under Fleming's successors. The lawn has been graded, improvements made, and the Mansion House equipped and furnished in a manner somewhat in keeping with the official necessities and requirements of the office of Governor.

8. **United States Senators Chosen.**—Senator Kenna died in January, 1893, making it necessary for the Legislature at the session of this year to elect a Senator to fill the vacancy until March 4, 1895, and also a Senator for the full term to succeed Senator Faulkner. On the separate votes in each of the Houses Johnson N. Camden had a majority of the votes for the unexpired term, and Charles J. Faulkner had a majority of the votes as his own successor; so on the following day, in the Joint Assembly, both Camden and Faulkner were declared elected.

9. **Smallpox at Mason City.**—In May, 1892, a young man named Roseberry was taken sick at Mason City on the Ohio River. His disease was said to be erysipelas, and it was treated as such. On the fourteenth day of his illness he died, and was buried on the following day. Three days later he was disinterred and removed to a small settlement in the country, where a second funeral was held. No attempt was made to protect the community from contagion. The consternation

and excitement of the people may be imagined, when, within four days after the second interment, six cases of smallpox had developed in the town. The outbreak of the disease was reported to the State Board of Health, which at once acted in conjunction with the local board to prevent the spread of the malady. The State Board of Health of Ohio was invited to cooperate, and responded promptly. The disease had been brought to Mason City by Roseberry from Pomeroy, Ohio, just opposite Mason City, where at first it had been taken for a bad form of chickenpox. A strict quarantine was established on both sides of the Ohio. Mason City was completely isolated. Inspection stations were established at a number of points in Ohio, and at Parkersburg, Ravenswood, Hartford City, West Columbia, and Point Pleasant, West Virginia. A strict guard was maintained. The epidemic developed rapidly among those who had been exposed. The whole number of cases in Mason City was fifty-seven, of whom six died. Eight other cases were reported outside of the city. Twenty-four houses were infected, but the contagion did not extend to a single new place after the establishment of quarantine. There were not wanting people to complain of the hardships of the quarantine, and to censure the health officers; but the State Board of Health sanctioned every act. The wisdom of the great power lodged in the boards of health was justified in the rapidity with which the authorities arrested the progress of this dread disease.

10. Decennial Progress (1880–1890).—In the interval from 1880 to 1890 the population of the State increased from 618,443 to 762,794; railroad mileage increased to 1700 miles; value of live stock twenty-six per cent; value of nine chief farm products twenty-nine per cent; value of mineral wealth one hundred and fourteen per cent. The State was fourth among coal producing States in the Union; second in the production of coke; third in the production of petroleum; and the product of the forests yielded more wealth annually than the mines.

11. **Election of 1892.**—The election of 1892 resulted in the choice of William A. MacCorkle, the Democratic candidate for Governor, by a vote of 84,585 to 80,663 for the Republican candidate, Thomas E. Davis. The entire Democratic ticket was elected by practically the same vote: Isaac V. Johnson, Auditor; J. M. Rowan, Treasurer; Virgil A. Lewis, State Superintendent of Free Schools; and Thomas S. Riley, Attorney General.

CHAPTER XX.

MacCORKLE'S ADMINISTRATION (1893-1897).

1. **Inauguration of State Officers.**—Governor MacCorkle on the fourth day of March, 1893, took the oath of office and entered upon the duties of his office. The other executive officers also qualified and entered upon the discharge of their duties. The usual formalities of inauguration were observed.

2. **Policy of Governor MacCorkle.**—The new executive was a young man wide awake to the needs of the State, and the range of subjects to which he called the attention of the Legislature is extensive. Among the more important ones are the following: taxation by the Board of Public Works, in a manner similar to the taxation of railroads, of the business or franchise of telegraph, telephone, and express companies, doing an interstate business; taxation of sleeping cars; taxation of rolling stock leased by railroads which escapes taxation by reason of the legal title being in a non-resident trustee; the creation of the office of Commissioner of Insurance, and a general revision of the insurance laws; inspection and regulation of building and loan associations; laws providing for the appointment of fish and game wardens, and for the protection of game and the culture of fish in our streams; a reform school for girls; compulsory attendance of children at the public schools; county school-book boards; liberal appropriations to meet the needs of growing institutions; the disfranchisement of any voter convicted of selling his vote, and making him ineligible to hold any office.

3. **Management of Public Institutions.**—The first Legislature that met during this administration had a Republican

majority. The Legislature passed acts in a number of instances reorganizing the boards of state institutions, and requiring the Governor to make his appointments so as to give to each political party representation on these boards. In his message of 1897, Governor MacCorkle says: "The question of non-partisan boards has been thoroughly solved in this State. The system has been found to work even beyond the most sanguine expectations of its promoters. .. .. there has never been a division on party lines .. .." The Governor gave a great deal of personal attention to the administration of the affairs of institutions. Not a charge of fraud or scandal was heard. The laudable aim was to secure to the State the full benefit of every dollar expended, and to secure a strictly pure and unselfish service from officials and employes, without regard to personal or political connections. The Governor cordially entered into the spirit of reorganization brought forward by his Republican Legislature, and carried out the reforms so as to give to the institutions the greatest degree of efficiency free from the influence of politics.

4. **Riot at Eagle.**—On the 28 of February, 1893, a conflict took place at Eagle, in Fayette County, between some striking miners and the Wyant Coal and Coke Campany, in which one man was killed and several injured. The sheriff asked for troops. A battalion was sent to his assistance. The trouble continued for same time during which a number of persons were injured; a bridge was burned; threats of the destruction of private property were indulged in; and some attempts are reported to have been made to carry out these threats. "The presence of the troops," says the Governor, "prevented further hostilities," and the sheriff was enabled to arrest the disturbers and convey them to jail to be dealt with by the courts.

5. **The Military in Marshall County.**—Early in June, 1894, the sheriff of Marshall County, as well as a number of prominent citizens, telegraphed the Governor that there was a riot

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at Boggs's Run, near Benwood Junction on the Baltimore and Ohio Railroad; that the movement of trains was obstructed, and threats made against private property; that the civil power was helpless; and that military force was needed. The upheaval was general: it was the time of the great coal strike of 1894. "After becoming satisfied," says the Governor, "that such was the case, the entire First Regiment, under command of Colonel Fast, and Companies E, F, G, and I of the Second Regiment, under command of Colonel Hodges, were immediately ordered to Boggs's Run, the whole being placed under the command of General B. D. Spilman, Brigade Commander. .. .. The action of the troops prevented great lawlessness. .. .. Several times a conflict seemed inevitable, but was fortunately averted. Trains were stopped, obstructions were placed on the track, vast crowds collected, and the trains were moved with the aid of the soldiery."

6. Other Calls for the Military.—In 1894 occurred the migrations of "Coxey's Army," "Kelly's Commonwealers," and other organizations of hobos. There were calls for military force to repel invading miners from Ohio, at New Haven Mines in Mason County, and to protect the Norfolk and Western bridge at Kenova. At another time two companies were sent to Kenova, under command of Major Banks, where the advance guard of Kelly's Army were taken from a train which they had captured, and were driven out of the State. The remainder of the gang, after this experience, did not attempt to pass through West Virginia.

7. Coal Strike at Flat Top.—In the Spring of 1895 a strike was declared in the Flat Top region on the Norfolk and Western Railroad. The chief disturbances were on the Virginia side. It was reported that the West Virginia miners were organizing to cross the line and compel the Virginia miners to cease work. Governor O'Ferrall asked permission to send troops into West Virginia to break up these organizations. Governor MacCorkle courteously declined to accede to the

request. No act of violence had taken place which was sufficient to call for troops; but the Second Regiment was held in readiness in case of an emergency. The strike on the whole was peaceable, the Governor declined under the circumstances to send troops to the scene, and in the end the whole trouble was adjusted.

8. **Election of a United States Senator.**—The Joint Assembly met in the hall of the House of Delegates on January 23, 1895. Stephen B. Elkins had been nominated for the United States Senate in a caucus of the Republican members. The Houses did not make a choice voting separately. In the Joint Assembly Mr. Elkins was declared elected, having received sixty votes, while Johnson N. Camden received twenty-nine, and Wirt R. Neal received two. Mr. Elkins was the first Republican Senator elected since Boreman in 1869.

9. **Election of 1896.**—In the election of 1896 George W. Atkinson, the Republican candidate for Governor, received 105,629 votes to 93,559 cast for Cornelius C. Watts, the Democratic candidate, a plurality of 12,070. The entire Republican State ticket was elected, including L. M. La Follette for Auditor; M. A. Kendall for Treasurer; James Russell Trotter for State Superintendent of Free Schools; and Edgar P. Rucker for Attorney General.

10. **Surrender of Democratic Control.**—In his last message Governor MacCorkle candidly says: "After about twenty-five years .. .. the party which has been in power turns over the reins of government to the party with which it has been contending. It is with no fears that I turn over to the Republican party the affairs of the State .. .. I believe there is just as much love for the State, and as much interest in its development in the one party as in the other. The only difference between us is the question of methods."

CHAPTER XXI.

ATKINSON'S ADMINISTRATION (1897-1901).

1. **Inauguration of State Officers.**—Governor Atkinson and the other executive officers took the oaths of office and entered upon their respective duties on March 4, 1897. The usual inauguration ceremonies were observed. Governor Atkinson was the first Republican Governor who had assumed the duties of the office during twenty-six years. The Democratic administration had been uninterrupted since March 4, 1871, when Jacob became Governor. But Democracy reached its high water majority in 1880, since which time its majorities steadily declined, with one or two exceptions, until the balance of votes was on the Republican side.

2. **Policy of Governor Atkinson.**—Some of the more important subjects to which the new Governor gave his sanction are the following: laws supplementing our public school system by a system of free public libraries; the establishment of a state public library commission; the adoption of some system of permanent road building; laws regulating the employment and hours of labor; laws to encourage the propagation of fish and game; the construction of a fireproof building for the use of state offices; a board of pardons; the care of indigent children; radical amendment of the election laws; a constitutional amendment to distribute the school fund; an immigration bureau; a state commissioner of revenue; repairing and improving the Capitol and the adornment of the grounds.

3. **The War With Spain.**—The war with Spain emphasized the importance to the State of maintaining a well organized volunteer soldiery. Two regiments were called into the service

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of the United States from this State. One was under command of Col. B. D. Spilman and the other of Colonel D. T. E. Casteel. Both regiments were made up of admirable soldiers, who bore an excellent name for efficiency. The call by the United States would have exhausted the National Guard had not these regiments been recruited largely from the unorganized militia. Since the war the National Guard has been reorganized under the command of Brigadier General George W. Curtin.

4. **Public Executions Abolished.**—In its issue of December 19, 1897, the New York *Sun* gave an account, "made up of a skillful blending of some unpleasant facts and much libelous fiction," of the hanging of John F. Morgan in Jackson County, in the presence of "5,000 people, on foot, on horseback, in wagons, up trees, and on fences," where they had congregated to satisfy a morbid curiosity; and the reporters seizing upon the event, wrote it up in a style to satisfy the equally morbid appetite of the readers of a great metropolitan journal. At the next session after this event, Mr. J. S. Darst, a member from Jackson County, introduced into the Legislature a bill requiring all executions of the death penalty to take place within the walls of the Penitentiary, within an enclosure to be prepared for the purpose, and in the presence of a limited number of witnesses. Copies of the *Sun's* article were circulated among the members; they were stung by the unpleasant notoriety which such scenes gave to the State, and the bill became a law.

5. **United States Senator Chosen.**—At the session of 1899 Nathan Bay Scott, being the nominee of the Republican caucus, was elected a Senator of the United States in Joint Assembly, receiving forty-eight votes to forty-six for John T. McGraw, the Democratic caucus nominee, and one vote cast for Nathan Goff. The full membership of both Houses aggregates ninety-seven votes. Only ninety-five votes were represented in the Joint Assembly. Mr. McGraw filed a protest in

the United States Senate against allowing Mr. Scott to take his seat, because he had not received a majority of all the members *elected* to the Legislature; but the protest was dismissed and Mr. Scott was seated.

6. Condition of the State in 1900.—At the end of the century West Virginia approximates 1,000,000 of population. It is first in the production of oil and natural gas; second in production of coke; and within the last year, has moved up from fourth to third place among the States in the output of coal, taking precedence of Ohio. New towns have sprung up; old towns have taken a second growth; the development of Clarksburg, Fairmont, Morgantown, Moundsville, Sistersville, and Parkersburg, among others, has been phenomenal; country life has improved; institutions have developed and have entered upon a career of useful expansion. The achievements of the present are but a forerunner of that which is to come: the promise of the future is bright, if only wisdom and prudence shall continue to guide the policy of the State.

7. Election of 1900.—The campaign and election of 1900 were good natured, quiet and orderly. The Republicans nominated Albert B. White of Wood County for Governor, and the Democrats nominated John Homer Holt of Cabel County. The leading candidates engaged in joint discussion for a time. The result of the elections, State, National, and local, was signalized by a decisive Republican victory. White received a total vote of 118,798, Holt 99,282, and 1780 votes were cast for other candidates. White's plurality over Holt was therefore 19,516 and his majority over all candidates was 17,736. Every candidate on the Republican state ticket was elected, together with a Republican majority in both Houses of the Legislature insuring the return of Senator Stephen B. Elkins to the Senate. Arnold C. Scherr of Mineral County was elected Auditor; Peter Silman of Kanawha, Treasurer; Thomas C. Miller of Marion, Superintendent of Free Schools; Romeo H. Freer of Richie, Attorney General. The same party

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elected a member of Congress in each of the four districts in the State. B. B. Dovener succeeded himself in the first; Alston Gordon Dayton in the Second; Joseph H. Gaines defeated Johnson the sitting Democratic member in the Third; and James A. Hughes succeeded Romeo H. Freer, Republican, in the Fourth. Henry Brannon of Lewis and George Poffenbarger of Mason were elected judges of the Supreme Court of Appeals, giving the Republicans three out of the four members of that body.

CHAPTER XXII.

INDUSTRIAL HISTORY.

1. **Land Titles.**—All the land between the Alleghanies and Ohio, in West Virginia, except a few grants by the King of England to companies and individuals, once belonged to the State of Virginia. All land titles in that region can be traced back, through all changes in possession, to the time when the land belonged to the State. None of it ever belonged to the United States. That part of Virginia which lay west of the Ohio River was ceded to the general government soon after the Revolutionary war and it became government land. But such was not the case east of the Ohio. In 1779 Virginia put on the market for sale its land west of the Alleghanies. Actual settlers procured many small tracts at a very small cost, and cleared fields and made homes.

2. **Land Speculators.**—No sooner was the land placed upon the market than speculators commenced to buy it with the expectation of selling it at an advance in price. Tracts containing tens of thousands of acres were thus bought. Under the law at that time the purchaser might buy the right to locate a stipulated number of acres, and he could afterwards locate the land where it best suited him, either in one tract, or in different tracts. The boundaries of land located in that manner were often vague and indefinite, leaving room for many and costly lawsuits in the future. The locations of one speculator frequently overlapped those of another. Occasionally a dozen or more farms, with their houses and fields, would be covered by the claims of a single speculator. The actual settlers, who had bought and paid for their lands, usually held their pos-

session in spite of the efforts of the speculators to pick flaws in the titles or to discover errors in the boundaries. The purpose of those who laid claim to large tracts, covering many smaller ones, was sometimes honest—perhaps generally honest. The object was to hold only such land, within the prescribed area, as still belonged to the State.

3. Disputes and Lawsuits.—Many disputes and lawsuits have resulted from the poor system under which the State of Virginia sold its land. Titles to valuable property have been found defective. Prospective buyers often hesitate before making a purchase, and require the seller to prove that his title is good. Legislation and the decisions of the courts have done much to settle many controversies regarding land titles in West Virginia. Claims which are unjust have little show of success in the courts. Actual possession, not contested for ten years, under claim or color of title, usually perfects title.

4. Public Roads.—The history of public roads in West Virginia is a history of shortsightedness, improvidence, carelessness and waste. This applies more to the early years of the State than to a later period. The solid earth, suitable for firm roadbeds; the slopes, affording drainage; and the abundance of macadamizing material, render nearly perfect roads possible in West Virginia, except that they must sometimes be steeper than desirable. During the first half century after the settlement of the State good roads were unknown, with very few exception. The bridlepaths of the pioneers were widened a little for roads, notwithstanding that they ran up hill, down hill, through swamps, over rocks, crooked when they should be straight, and straight up or down a mountain when they should have wound round it and gradually up it. Each neighborhood and each generation had ideas of its own; and nearly all were erroneous. Improvements came gradually. The first step was to abandon parts of old roads and build new

ones. These new roads were later superseded by still newer ones, and none of them were on the grades where they should be.

5. **Waste of Energy.**—How often in West Virginia may be seen the trace of a very old road running up a very steep mountain, and near it, but not quite so steep, is the abandoned bed of a later road; and perhaps a third, no longer in use, is near by, on a still better grade; while the modern highway which has superseded them all, winds gracefully round the base of the hill, the discovery having been made, after a hundred years of wasted energy in road making and hill climbing, that it was not necessary for a road to go over the hill at all. When a road is first surveyed it should be placed on the best possible grade. Then all subsequent improvements will be permanent.

6. **Turnpikes.**—The ordinary roads of the neighborhoods were made by the counties and districts. Within fifty or seventy-five years after the settlement of the western counties, Virginia assisted in building a few general roads called turnpikes. They were so called because there were toll gates on them. The old name for a toll gate was "turnpike," and this name, formerly applied to the gate only, came to denote the road. In 1835 a turnpike from Winchester to Parkersburg had been commenced. It was called the Northwestern Turnpike, and was surveyed, in part, by an engineer who had built roads for Napoleon Bonaparte. A turnpike from Staunton to Parkersburg was authorized by act of Assembly in 1824, and was completed about twenty years later. There were other turnpikes in various parts of the State. They were not built entirely with state money. There were appropriations by counties and subscriptions by individuals.

7. **Better Methods.**—The highways built under state management were usually much superior to those made by counties and districts. They were placed on better grades, and the material and workmanship were better. Of late years a

marked improvement has taken place in West Virginia highways. Primitive methods have given place to scientific principles. There is yet room for improvement.

8. Ferries.—**For many years after the settlement of the country west of the Alleghanies, bridges across the larger** streams were unknown. The State established ferries over some of the rivers, and regulated the business by law. As early as 1790 there were eight ferries in Hampshire County, and perhaps an equal number west of the mountains. No person was permitted to go into the ferry business in competition with the State. The penalty for so doing was a fine of twenty dollars for each passenger carried.

9. **Bridges.**—When the State of Virginia became interested in turnpike building it also took steps to provide excellent bridges. These structures were of wood, and if their length was considerable, they rested upon arches. They were covered with shingles, and were weather boarded. At the present time but few of those old bridges remain. Among the oldest, still in a fairly good state of preservation, is that over Cheat River in Preston County; that over Tygart's Valley River in Barbour County, and that over the Greenbrier River in Pocahontas County. Steel bridges have superseded the wooden structures of half a century ago.

10. **Modes of Travel.**—Before the building of railroads the traveler through West Virginia could take his choice of several modes of going upon a journey. He could walk, and follow any road or trail; he could ride horseback upon nearly any road; or he could go in a stage coach, pursuing the turnpikes or principal roads, and travel by night as well as by day. The stages made long journeys with a regularity not much excelled by railroads; but the speed was slower. In 1845 the Baltimore and Ohio Railroad was completed to Greenspring, fifteen miles east of Cumberland. A line of stages was then put on the road by Nathaniel Kuykendall

between that point and Parkersburg. The distance was two hundred and six miles, and was covered by the stages in two days. Passenger trains arrived from Baltimore three times a week and upon the arrival of each train a stage left for Parkersburg and Marietta. The railroad fare from Baltimore to Greenspring was four dollars, and the stage fare to Parkersburg was ten dollars. The train ran from Baltimore to Greenspring in nine hours.

11. Railroads.—The railroads brought about many changes in West Virginia. They turned commerce into new channels; they ruined business in some localities and greatly increased it in others. Villages which had been prosperous ceased growing; but, if one town was injured, several new ones sprang up in other places. On the whole the people of the State were benefited immensely by the railroads, which assisted development as nothing else could. Without them the sites of many flourishing towns would still be farms or forests. The Baltimore and Ohio Railroad was the only one in West Virginia at the close of the Civil War. It crossed the State from Harper's Ferry to Wheeling, with a branch from Grafton to Parkersburg. It was of immense importance during the Civil War in transporting troops and military supplies. The State now has numerous railroads over which its vast wealth of coal and lumber, as well as other products, go to market. The most active period of railroad construction, as well as development in other lines, was the four years from 1896 to 1901. During that time sixteen railroads, or branch railroads, were built in West Virginia.

12. The Navigation of West Virginia Rivers.—The first navigators of the rivers of West Virginia, of whom anything is known, were the Indians in their light canoes. Then came the canoes of the pioneers, followed in course of time by small boats which passed up and down the Ohio and were occasionally seen on the Kanawha, the Monongahela, and other streams of the State. The freight was household goods, mer-

chandise and the local commodities. The boats floated down with the currents, and were propelled back by poles and paddles. Flatboats, which floated down the South Branch from as far up as Grant County with flour, and barges laden with iron from the Hampshire County bloomeries, never returned. They could not work back against the current, and they were sold, with their cargoes, when they reached their journey's end at tidewater.

13. **Steamboat Navigation.**—The steamboat was a West Virginia invention. The first one launched in America was operated upon the Potomac in Morgan County by James Rumsey in 1783. As early as 1811 steamboats were seen upon the Ohio. In 1826 the first was seen upon the Monongahela in West Virginia.

14. **Iron Furnaces.**—It is a matter of dispute whether credit for the first iron furnace in West Virginia, doing an extensive business, should be given to Monongalia County, or to Hampshire County. Before the close of the eighteenth century iron was manufactured in Monongalia; and in Hampshire County stoves were made a century ago. Furnaces were built in many parts of West Virginia during the first half of the nineteenth century. There being poor facilities for transportation, much of the manufactured iron was used near the furnaces; but a portion of it was carried to distant markets. The price was sufficient to justify high freight charges. Barge loads of iron went from Hampshire County to tidewater Virginia and Maryland; but the waterway was so rough that navigation with heavily laden boats was difficult. Barges loaded with iron lie in the bottom of the streams to this day. Transportation of iron from interior points was carried on with some success in different localities. In 1849 iron from Barbour County, after a haul of fifty miles on wagons, was sent to market in boats upon the Monongahela.

15. **River Improvements.**—The need of improving West Virginia rivers, to facilitate trade and develop resources, was

felt a century ago; and as early as 1785 the first steps were taken in that direction. A portion of the channel of the Potomac was cleared of rocks at and below Harper's Ferry. The Ohio was navigable without artificial works; but the Kanawha, the Monongahela, and the other rivers of the State stood in need of locks, dams and other improvements. The first developments of that kind were carried on by private individuals or companies. But the United States Government finally took up the work, and large sums of money have been expended to make the rivers of West Virginia navigable at all seasons of the year.

17. Salt Manufacture.—The first salt well in West Virginia was drilled by Joseph and David Ruffner in 1808 on the bank of the Kanawha River near Charleston. Before that time salt had been made there from the water collected in shallow holes. As early as 1753, and no doubt much earlier, the Indians manufactured salt on the banks of the Kanawha. They boiled the water by collecting it in troughs and dropping hot rocks into it. When the white people first began to make salt at that place they used iron kettles in which to boil the water. They had no means of purifying the brine before boiling it, and in consequence, the iron and other chemicals which it contained gave the salt a red color. It was good salt, and the belief became general that red salt was best, and buyers often asked for it, and bought it in preference to the purified article. The salt manufacturers on the Kanawha became the largest in the country. At first the price was ten cents a pound. In 1808 the price was reduced to four cents. The furnaces were fed with wood during the earliest years; then coal was discovered and was made use of; and finally natural gas boiled the brine. Salt springs are found in nearly every county of the State. Salt was made in Braxton County from the first settlement of that region until it became cheaper to buy it than to make it.

17. Natural Gas.—Within a few years past natural gas has come into general use as fuel in some portions of West Virginia. It is not met with east of the Alleghany Mountains, nor is it known to exist in West Virginia, in large quantities, except in regions where coal is found. Natural gas has been met with in our State since the earliest settlements. The pioneers found wells that bubbled, and springs that burned when a blaze was applied. The blaze was caused by natural gas. It comes from far underground, finding its way to the surface through crevices of rocks. It may often be seen bubbling up in rivers and ponds.

18. Gas Wells.—The first gas well in the State was bored in 1815 on the site of Charleston. The first well from which the gas was put to practical use was bored by salt makers on the Kanawha in 1843. The borers sought salt, but found gas, and used it to heat their furnaces. The first use of natural gas as fuel in the United States was in West Virginia. It is believed that gas, oil, and coal all owe their existence to the same cause—vegetable deposits buried in vast swamps in past ages.

19. Petroleum.—The first wells producing oil in commercial quantities were in the Kanawha Valley. They were bored by the salt makers. Petroleum had long been known in different parts of the world. It had been collected on the surface of the water and in cavities among rocks, and it had been sold in bottles and jugs. It had different names in different localities; "rock oil," or "sand oil," or "mud oil." The name now generally accepted, "petroleum," is formed of two Greek words and means "rock oil." In the first twenty years of the nineteenth century so much petroleum flowed from the salt wells into the Kanawha River that the stream was called "Big Greasy." The idea of collecting the oil and selling it seems not to have occurred to any one there.

20. On the Little Kanawha.—In 1844, on Hughes River, George S. Lemon, with the assistance of a mulatto named

Hugill, who had learned the well-boring business among the Kanawha salt works, bored a well for salt, and at a depth of 100 feet struck oil. This well was bored by water power, being the first time in the State, if not in the world, that water power was applied to well boring. This well produced one barrel of oil a day. The price of oil flowing from the well was then thirty-three cents a gallon, and the chief market was at Marietta, Ohio. Before oil wells were put to practical use, from fifty to one hundred barrels a year of petroleum were sent to market from West Virginia, chiefly from the Little Kanawha. It was collected in pits and holes dug in the saturated soil where the oil-bearing strata far under ground had been broken, permitting the petroleum to escape to the surface.

21. **Inventions by West Virginians.**—Well boring has become a great business in all parts of the civilized world. It is, therefore, worthy of note that citizens of what is now West Virginia invented almost every appliance now used in deep well boring. These inventions have gone throughout the world. Many of them have been greatly improved, but the original ideas were those of West Virginians. The first well pumped for oil in the State was on the bank of the Little Kanawha in 1859, and was owned by the Rathbone Brothers, and was bored for salt. The first well in the State bored solely for oil was also on the Little Kanawha, in 1859. Success attended these efforts, and the development of the region followed rapidly. The Civil War checked operations, and in 1863 General Jones with 1300 Confederate cavalry set the tanks on fire. The burning oil poured into the river, and the flames swept along the surface of the water for miles, destroying every inflammable thing. A few of the wells drilled in 1861 are still producing oil in small quantities.

22. **New Era of Oil.**—Owing to the firm nature of the rocks beneath which the petroleum was found in the Little Kanawha region, the operators had little trouble in reaching it. All

that was necessary was to keep at it until wells were deep enough. But when attempts were made in other regions difficulties were encountered which were not overcome for a quarter of a century, and a check was put upon the oil development in West Virginia. The rocks were soft and they crumbled and caved in, choking the openings and compelling operations to cease. Finally large iron tubes were used for casing in the wells as they were bored deeper. The crumbling walls were thus held in place and it became possible to bore a mile deep. Taking advantage of that discovery, oil development in West Virginia revived in 1889. Immense sums of money were spent and large fortunes were made.

23. **Science Instead of Chance.**—The early operators, in search of petroleum, depended largely upon chance, supplemented by such surface indications as gave promise of oil. Later it was discovered that chance could be largely dispensed with. Geologists demonstrated that certain rock formations are closely associated with the presence of oil. In some regions the folding of the strata was such that no petroleum was to be expected; in regions of different rock-foldings oil was likely to be found. The most prominent among those who made these investigations and discoveries was Dr. I. C. White of West Virginia. Few men have been so successful in putting the principles of geology to practical use.

24. **Pumping Oil Wells.**—At first oil wells were pumped singly, but the method was slow and expensive. It remained for a West Virginian (W. C. Stiles of Wood County) to discover a method by which he was able to couple together as many as forty wells at one time and pump all of them at once with a single engine and one man. This discovery was made in 1874.

25. **Pipe Lines.**—Coal, grain, cattle, lumber, and almost every other product of the mine, field, factory, or forest, must go to market by rail, boat or wagon. With petroleum it is

different. Were it to go to market in cars, the cost would be so great that the industry would be crippled. A cheaper method has been found. Lines of iron pipe are laid, connecting numerous wells and tanks, and a large line carries the oil hundreds of miles to market. Immense engines, and pumps of vast strength, force the oil over mountains and through valleys, across counties and across States. The oil from West Virginia is pumped through lines to the seaboard at New York.

26. **Oil Pools.**—An erroneous idea is apt to be conveyed by the term "oil pool," in speaking of any particular oil region. Oil does not exist in large subterranean caverns or lakes; but it permeates the porous rock which retains it much as a sponge retains water. The same is true of natural gas. It fills very small fissures or exists in porous rocks, but not in vast caves and abysses far below the surface of the ground.

27. **Why Mountain Regions Have No Oil.**—Efforts in West Virginia, and elsewhere, to find oil and gas in mountain regions have not met much success. These elements may have existed once among the strata which now form mountains; but the tilting and breaking of the rocks, in the process of mountain building, long ago permitted the gas to escape into the air, and the oil to flow out upon the surface where it was soon washed away. If either oil or gas exists now among the West Virginia mountains, it must be expected only at great depths where the unbroken strata are still firm enough to hold it.

28. **Coal.**—Before the building of the Baltimore and Ohio Railroad into West Virginia, the export of coal was not attempted. For many years after the road had crossed the State the mining of coal was not an important industry. The nineteenth century was drawing to a close before the fact became generally known that West Virginia's wealth in coal was almost beyond estimate. New railroads pushed into the

State, while the older roads constructed branches, and coal regions were opened to the miner, and developments on a very large scale were undertaken. The principal coal districts of the State lie in Mineral, Grant, and Tucker counties; in the extreme southern part of the State; in the region west of Laurel Hill upon tributaries of the Monongahela; and in the country bordering on the Kanawha and New River. No less than one-third of the surface of the State is underlaid with coal.

29. **Coke.**—Instead of sending coal to market as it comes from the mines, much of it, when suitable for the purpose, is converted into coke by subjecting it to heat in a specially constructed furnace. In that form it is more valuable, has less weight, is suited to particular uses, and finds a market where coal could not be used.

30. **The Lumber Industry.**—An important part of the natural resources of West Virginia is its lumber industry. Little development of the forest wealth was attempted until after the close of the Civil War. Timber which grew adjacent to large streams was cut and rafted to market; but not until railroads penetrated remote sections of the State did the lumber business become one of leading importance.

31. **Forest Trees.**—It is believed that a greater number of species of forest trees are found in West Virginia than in any other State. This is due to the fact that the State partakes of the climate of both the north and of the south; its high mountains are congenial homes for trees whose natural habitat is in Canada; its eastern portion is suited to flora of the Atlantic coast; its western part partakes of the characteristics of the Ohio and Mississippi valleys. All of these causes combining have given West Virginia more than one hundred species of forest trees. One half of them are valuable for lumber, and others are important for the tanbark which they produce. The important species of trees found growing wild in West

Virginia are the cucumber, yellow poplar, poplar, lin, wahoo, fetid buckeye, sweet buckeye, striped maple, mountain maple, sugartree, soft maple, red maple, ashleaved maple, locust, black cherry, sweet gum, sour gum, dogwood, big laurel, white ash, red ash, green ash, sassafras, slippery elm, rock elm, sycamore, butternut, black walnut, shellbark hickory, black hickory, brown hickory, bitter hickory, white oak, basket oak, chestnut oak, red oak, quercitron oak, black oak, Spanish oak, pin oak, possum oak, laurel oak, chestnut, beech, ironwood, blue beech, yellow birch, red birch, black birch, aspen, white cedar, red cedar, white pine, pitch pine, yellow pine, black spruce, hemlock and balsam fir.

32. **Wood Pulp.**—Within the past few years the manufacture of wood pulp for paper making has become a leading industry in West Virginia. Logs are grappled by machinery and are firmly held against large grindstones and are thus torn and ground to exceedingly fine splinters. These splinters are pressed into sheets of paper. Paper was formerly made almost exclusively of rags, and as early as 1839 a paper mill was in operation at Morgantown.

33. **Tanbark.**—An important industry of West Virginia, of recent development, is the cutting of bark for tanning purposes. The chief barks used in the State are oak and hemlock. Sumach is used in tanning morocco leather.

34. **Newspapers.**—The first newspaper published in what is now West Virginia was the *Monongalia Gazette*, founded at Morgantown in 1803. The *Farmer's Register*, at Charlestown, was the next. These were the only two papers printed in the State in 1810. The oldest paper still being published in the State is the *Virginia Free Press*, printed at Charlestown. It was founded in 1821. Of all the newspapers within West Virginia when it became a State, only eight are in existence now. These eight are, The Wheeling *Intelligencer*, Wheeling

Register, Clarksburg *Telegram*, Charlestown *Free Press*, Charlestown *Spirit of Jefferson*, Shepherdstown *Register*, Wellsburg *Herald*, and Point Pleasant *Register*.

35. **Change in Manners and Customs.**—The closing fifteen years of the nineteenth century witnessed greater changes in the manners of the people of West Virginia than had taken place in the preceding hundred years. These changes were due to the introduction of new industries and new people. The opening of new mines brought miners where none had been before, and the rural district was converted into a mining town. The building of railroads brought people who live upon railroads, and villages sprang up where forests had held possession. The lumber industry and the tanbark industry brought people of different habits. The developments in the oil and gas belts wrought changes there. Manufacturing plants, such as glass houses, woolen mills, tobacco factories, carshops, and other lines of work, all had their effect. The operators and laborers employed upon these new enterprises were not all people from other States. Many of them are native West Virginians who have left their small farms to try their fortunes upon or among public works. But whether natives of this State or immigrants from other States, the change in the manner of life has been no less marked. New ideas have been introduced; money has come in. Generally speaking, the people are in better circumstances than when public enterprises in the State were few and small. Those who have not sought employment among the new industries, have been at least able to share in the prosperity by selling their coal, land, or the products of their farms and gardens. Thousands of modern and comfortable homes throughout the State, where cheap, small and dark houses stood fifteen years ago, are evidence of the era of better things. Agriculture has made progress, keeping it abreast of development in other lines. Better breeds of stock have been introduced; better farm machinery; better grain; larger fields; and cleaner fence

rows; more commodious barns; warmer shelter for stock; better comforts and more luxuries for the family. Good newspapers and wholesome books furnish reading for the people who have reason to be better contented than ever before.

CHAPTER XXIII.

EDUCATIONAL HISTORY.

1. **The Beginning of Free Schools.**—The State of Virginia never encouraged free schools until after the Civil War; although the laws provided funds in a small way, and many schools were supported, in part, by public money. But the conditions and requirements were such that the pupils who accepted the public money were too often looked upon as paupers. Family and individual pride, and a general sentiment against free schools, made the system of little value. But after the Civil War broke down many barriers which had hedged about popular education in Virginia, there was a reaction in favor of schools which should be free for all. This was the case particularly in West Virginia after it was so fortunate as to free itself from the domineering influence of the old State.

2. **Private Schools.**—Efforts were made to establish private schools in western Virginia soon after the Revolutionary war. These schools ranged from very primary affairs to academies and colleges of a high degree of excellence. Nearly every county had one or more of them. Some were very small and obscure, and were presided over by itinerant pedagogues of questionable learning; others were capable of giving an education by no means inferior. But taken as a whole, those schools were not the equals of the public schools of the present time. It was not possible for any considerable number of the youths of the country to attend, and the education of the poor was usually neglected.

3. **Disappearance of Private Schools.**—No sooner did the State provide means for public schools, than the private ones began to disappear. There was little division of sentiment on the subject. All the children, poor as well as rich, are

entitled to an education; and the property of all ought to be taxed for that purpose. The voters of each district were at first, and are still, given an opportunity at school elections to say whether or not a tax for school purposes shall be levied; and it is an unusual thing for a vote to be cast against the tax.

4. Normal Schools.—When West Virginia first provided funds for free schools, there was a scarcity of competent teachers. Nothing else was to be expected from the system of educating its people which had been followed by Virginia. Improvement was slow at first. Better teachers were absolutely necessary to the success of the free school system. From this need grew the sentiment which led to the founding of the State Normal schools for educating teachers.

5. The Graduating System.—When public schools were first established in West Virginia they were conducted upon no uniform plan. Each teacher followed ideas of his own, and his ideas were too often few and poorly defined. System was lacking. The course of study was frequently left to chance. Each pupil studied what he pleased, or what he could. The more intelligent educators were not slow to see that the best results were impossible in that state of affairs. The first to formulate and put into practice a system under which all the schools of the State could work in harmony, and along the same lines, was Alexander L. Wade, of Monongalia County. In 1874 he organized schools with regular courses of study, and two years later the first class graduated. The system, with divers modifications, has been very generally adopted, not only in West Virginia but into more than half of the schools of the United States.

6. State Educational Association.—As early as 1865 a number of teachers in the West Virginia schools met to discuss matters relating to their profession. From that small beginning has grown the State Educational Association which now wields a powerful influence for good in our State.

PART II.—STATE GOVERNMENT.

CHAPTER XXIV.

ORIGIN OF SOME UNITS OF LOCAL GOVERNMENT.

1. **Importance of Studying Historic Originals.**—In order to understand intelligently the Virginia county, it is necessary to consider briefly its English original, and to notice some other units of local government both in Europe and America, viewed in the light of their historic origin. No just idea of any system of government can be had without a knowledge of the sources from which it came, and the essential changes that have occurred from time to time.

2. **Germanic Origin of English Units.**—Our Germanic ancestors from the shores of the Baltic Sea—the Angles, Saxons, Frisnians, and Danes—when they came over and conquered the Britons, brought with them their social and political institutions and customs of government, which they set up and enforced, wherever they established themselves. Everything was based upon the organizations of clans and tribes.

3. **The Earliest Types of Government Known.**—All primitive or barbarous races of men, in all time, the world over, so far as is known, have been at some time organized into tribes, composed of clans, which in turn were made up of family groups. Hence we find the family as the earliest type of government, under the rule of the oldest living male ancestor, who combined the powers of patriarch, priest, and ruler.

4. **Early English Types.**—The clans in England became townships, and the tribes became counties, at first called shires. Originally the names township and county meant groups of people; but in time they came to mean divisions of territory occupied by people. For example, in England, Essex, Wessex, Middlesex, and Sussex, originally meant, "East Saxons," "West Saxons," "Middle Saxons," and "South Saxons;" and so Norfolk and Suffolk, settled by the Angles, meant "North folk," and "South folk."

5. **England Pieced Together.**—There was no kingdom of England at this time, only independent clans and tribes, each managing its own affairs after the Germanic customs that had prevailed for centuries. The shires or counties in time became little kingdoms ruled by an ealdorman, or "elder man." In the desperate struggles for survivorship some of the little kingdoms became united, and in the end Ecgberht, King of the West Saxons, became overlord of all England, and the *shires* became the "*shares*" of those who ruled under him. Thus the kingdom of England was pieced together out of separate and independent communities, just as Massachusetts and Virginia were pieced together out of many separate settlements in America, and the United States was formed out of inharmonious and jarring fragments.

6. **Government of the English County.**—Before the union under one king the shires had conducted their own self-government, much as the American colonies had done before the establishment of the Union. But the English shires retained their county government for full 300 years after the kingdom came into being. A few words about the English county government will lead to a better understanding of county government in the Virginias.

7. **Government of the Shire.**—The shire was governed by the shire-mote, that is, the "county-meeting." It had both legislative and judicial powers, just as the General Assembly

of Virginia had in the beginning. After the conquest by William of Normandy the French name "county" came into use in place of shire, and the shire-mote became known as the county court, the forerunner of our own county courts. The English county had its sheriff, coroners, and justices.

8. **First Counties in Virginia.**—In the beginning members of the General Assembly in Virginia were elected from the various towns, hundreds,* and plantations; and local affairs were conducted in these communities. But the necessity for a uniform and exact unit of representation and administration in local government soon became apparent. Accordingly, fifteen years after the calling of the first General Assembly (1619), the colony was divided into eight *shires* (1634), "to be governed as shires in England:" nine years later (1643), the counties were formed; so that the name shire has fallen into disuse. At the time of the beginning of the Commonwealth in England under Cromwell, Virginia had thirteen counties.

9. **New England Township and Virginia County Compared.**—In New England the township became the unit of representation in the legislature and the area of local administration, instead of county as in Virginia. The genealogies of both Puritans and Cavaliers read much alike. Both came from the excellent stock of the middle classes in England. But *aristocracy*, that is, government in the hands of privileged classes to the exclusion of the common people, grew up in Virginia; while *democracy*, that is, government in which the people collectively legislate and choose executive and judicial officers in primary assembly, prevailed in New England. Counties exist in New England, it is true; but they exist chiefly for judicial purposes. The affairs of local government are managed by the townships. In the Virginias the magisterial district corresponds in a measure, in extent of territory at least, to the

* *Hundred.* A subdivision of a county, at one time common in England for administrative and military purposes. The subdivision was used for a time in Pennsylvania, Maryland, Virginia, and Delaware. It is still in use in Delaware. Traces of its existence are found among all Germanic peoples.

New England township; but aside from being the unit of administration of school affairs, it has none of the functions of a New England township. The township has its town house, where primary assemblies of the people meet; its annual town-meeting for levying taxes, electing officers, and determining the local governmental policy of the township; its administrative officers called selectmen; its town clerk; its town treasurer; its assessors, overseers of the poor, school committees, etc. It is a unit of local government as fully equipped for administration as the Virginia county. Why this marked difference? A number of causes operated to produce these differences among which may be noted chiefly, (1) differences in civil and church government, the Puritans representing the democratic idea, and the Virginians the aristocratic idea; in other words the differences between Roundheads and Cavaliers carried over to America: (2) differences resulting from the natural features of the country, mere physical situation, and consequently circumstances of trade, that is, economic conditions.

(1) **New England Settled by Church Congregations.**—The settlers of New England came over as organized church societies. Each congregation was a sort of little self-governing democracy, in which the whole adult male society took part. A church was located; small farms were laid out and houses built convenient to the church; it was the meeting-house for worship and the town-house for civil government; the rulers of the church were the rulers of the little state in the wilderness. It was a society in which all held equal rights as members.

(2) **Virginia Settled by Enterprising Tradesmen.**—The motives which prompted the settlement of Virginia had their mainspring in the prospective profits of trade. The adventure was primarily commercial. The migrations to Virginia were by individuals, not by organized groups or congregations.

Tobacco, which could be cultivated on large estates by cheap labor, was found to be a source of wealth.

(3) **The Virginia Plantations.**—A plantation was always large, sometimes containing many thousands of acres. These plantations were kept together in the same family, without being divided or parcelled out, by the laws of primogeniture and entails* until 1776, when these laws were abolished. The coast of Virginia is penetrated by many broad and noble rivers in which the tides of the sea ebb and flow for many miles inland, with a depth sufficient to float sea-going vessels. Plantations were located so as to be within reach of a navigable river. Each planter had his own wharf, where he loaded his tobacco on ships, which sailed directly to England, and where he received from foreign ports such commodities, as he desired to buy or trade for. The plantation was a little self-sustaining community within itself. It had its weavers, tanners, shoemakers, and other craftsmen, as well as slave laborers. It could have no near by neighbors. Under these circstances the county was the smallest area possible for representation and local administration. The conditions necessary for the town-meeting did not exist.

(4) **Small Farms of New England.**—Neither the soil nor the climate of New England was favorable to the growing of crops of staple products, such as rice and tobacco. While the coast abounded in good harbors, the rivers afforded no such facilities for inland trade as the rivers of the South. Agriculture must necessarily be carried on upon a small scale. The people attempted to raise no more than enough food stuffs for local use. Fish abounded and fishing industries sprang up. Salt fish could be exchanged in the West Indies for molasses; and from molasses a famous New England rum was manufactured. Gradually New England became a manufacturing and trading community grouped in towns, while Virginia

*_Primogeniture._ The right of the eldest son to inherit the estate to the exclusion of the younger sons and all the daughters. _Entail._ An estate limited by deed or will to a particular class of heirs.

remained agricultural with large plantations. The very conditions of soil, climate, and trade encouraged the cutting of New England into small farms, grouped around the towns; and, therefore, the towns became the units of local government.

(5) **Scarcity of Towns in Virginia.**—Under the conditions described in Virginia, the inducements for people to group themselves into towns were wanting. The planter could exchange his tobacco for sharp knives, well-made boots, fine blankets, and other manufactured commodities at his own wharf. Tobacco became the currency of Virginia, and this encouraged the growing of tobacco, and discouraged the development of useful arts and trades. Social distinctions, resulting inevitably from the institution of slavery, discouraged the immigration of intelligent and skilled labor. About the time of Washington's inauguration New York had a population of 42,000; Philadelphia, 33,000; Boston, 18,000; Baltimore, 13,000; and Richmond, less than 4,000. But the population of the two states of New York and Pennsylvania taken together scarcely equalled that of Virginia. "When Thomas Jefferson entered William and Mary College in 1760 .. .. he had never seen so many as a dozen houses grouped together." Even legislation, designed to promote the building of towns, failed of results. The economic conditions of trade did not favor towns and town life. Therefore the county, embracing large areas of country, was the only basis of local government.

10. **The Two Great Types of Local Government.**—Township government as developed in New England, and County government as developed in Virginia, either singly or in combination, have become the prevailing types throughout the United States. Wherever the New Englander went he transplanted his institutions of local government. Wherever the Virginian went he likewise carried with him the institutions with which he had become familiar.

11. **The Township and County in the Middle and Western States.**—In the middle Atlantic states and in most of the western states townships and counties have both come in for a share in local government. The township usually has the care of the poor, the control of school affairs, and the maintenance of highways. In some instances, however, as in Michigan, town meetings are held as in New England: in others the township, while having a share in the local government, is subordinate to the county government.

12. **The County in the South.**—The same causes that made the county the unit of local government in Virginia, operated throughout the South generally. The Virginia county became almost coextensive with slavery. The county courts, the justices, and other appointed officers, attended to the public business of the county. Members of the General Assembly only were elected in Virginia before 1850. Since the Civil War the southern states have shown a disposition to extend a share of the local administration to the townships.*

13. **The Township and County in Illinois.**—The rivalry between the township and county, as units of local administration in Illinois, affords an interesting and instructive study Take a map of the United States. Trace the parallels of latitude running through Massachusetts and central Virginia into Illinois The streams of migration from New England and Virginia followed, in the main, the parallels of latitude into Illinois. The northern half of the state was settled from New England; the southern half from Virginia and Kentucky, chiefly. Each section received the local institutions peculiar to the region from which its immigrants came. The township and county systems came into conflict. A struggle for supremacy ensued. At length a constitution was framed (1848) which enabled the people of a county to organize township governments, whenever a majority of the voters so determined. What has been the result? In half a century of trial

* Townships throughout the South are generally called districts.

the township system, by the free choice of the people, has almost rooted out the county system; so that at the present but one-fifth of the counties remain without township government. Minnesota and Dakota have adopted the principle and extended it, so that any one township, upon the petition of twenty-five voters, may obtain a township government, although every other township in the county may remain under county government. The system is called local option in government. Missouri and Nebraska have adopted it with gratifying results.

14. **Merits and Demerits of the System.**—Of the systems of local government resulting from the transplanting of English precedents in America, the township is especially to be commended as a training school for the citizens who must take part in the larger affairs of government. The town-meeting is a primary assembly, a sort of legislature in miniature, in which all the citizens are expected to sit as members, and to take part in the consideration and disposition of many questions of the highest importance to the community. It serves to fit them for the higher duties of citizenship. It is the school in which was trained Samuel Adams, "the man of the town-meeting." The county system is barren of any claim as an agency for the political education of the masses in practical questions of local self-administration. It has the single merit of prompt and convenient dispatch of business. It is somewhat like arbitrary authority, as long as it is in the hands of good men the results are good; but when power falls into the hands of the unscrupulous, dishonest administration is the result.

15. **Summary.**—We have thus seen how the Germanic conquerors of Britain, whom we designate now days as Anglo-Saxons, brought with them their institutions of clan and tribal organization; how the seat of the clan became the township, and that of the tribe, the county or shire; how England was pierced together out of little independent communities

called kingdoms, just as in America isolated settlements were combined to form colonies, and colonies grew into states, and states into a Federal Union; how shires were formed in Virginia, "to be governed as shires in England;" how English precedent was followed in all the settlements both north and south, but not the *same* precedent; how the township prevailed in New England and the county in Virginia, and why; how great plantations grew up in Virginia, while small farms were carved out among the Puritans; how towns failed to flourish in Virginia, while they became numerous and populous from the Hudson to the Merrimac; how the two systems of township and county government were transplanted to the West and Northwest, and came into rivalry; and how the township system has exhibited an intense vitality and a tendency to supplant its rival, wherever it has come into free competition with it.

CHAPTER XXV.

COLONIAL DEVELOPMENT OF REPRESENTATIVE GOVERNMENT.

1. **Government of the Colony (1606-1619).**—The government of the Virginias had its beginning in the charter of a great trading corporation, which was granted by King James I, in 1606, to Sir Thomas Gates and others. This great corporation, sometimes called the Virginia Company, had two branches: (1) the London branch; and (2) the Plymouth branch. They are usually spoken of in history as the London Company and the Plymouth Company; but the charter calls them the "first Colony" and the "second Colony," respectively. All states and sovereignties which grant charters, provide for the government of the company chartered. The provisions for the government of the Virginia Company were simple. The King retained full control. A council, styled the Council of Virginia, consisting of thirteen persons, resident in England, and appointed by the King, had the superior direction of all matters of government. This council corresponds in the main to the board of directors of a present day corporation. A local council in each colony, also consisting of thirteen persons, but appointed in accordance with instructions *given* by the King, governed with respect to local affairs in accordance with ordinances and instructions *approved* by the King. Under the King's instructions the local council of the "first Colony," with which we are alone concerned, was appointed by the London council, and a president was designated for one year. After the first year the colonial council had power to elect its own president each

year, depose him for misconduct, and fill its own vacancies. These powers are similar to those exercised by the stockholders of a present day corporation in general meeting.

In 1609 King James I yielded his usual obstinacy to the "humble suit and request" of some favorite members of the company so far as to grant them an amendment of their charter. By the amendment the London council was named by the King in the charter; but all vacancies were to be filled in the future "by the Voice of the greater part of the company . . . . . in their assembly for that purpose." The London council had power to admit any other person as a member of the company; and, further, in a General Assembly . . . . . upon good cause, to disfranchise a member. This council was also given power to make and remove governors, officers, and ministers, and to establish laws and government for the colony. It was also given power to lay and collect customhouse duties and to wage war for defensive purposes only. Thus the sole power of establishing a colonial government, making laws, appointing officers, levying and collecting customs, and waging war, was vested in the council.

The evolution of free government began with the second amendment of the charter in 1612 The Bermuda Islands were added to Virginia's territory. The company was authorized to hold a "Court and Assembly" once a week, or oftener at its pleasure, for the administration of the lesser affairs of the colony, at which not less than five members of the council and fifteen members of the company should be present. And for the dispatch of affairs of greater weight and importance, there were to be held "four Great and General Courts of the Company," in each year forever, for the purpose of choosing the council, appointing officers, and making such laws and ordinances for the government of the colony as to this assembly should "be thought requisite and meet," provided that the same "be not contrary to the Laws and Statutes of this our realm of England." Other

extensive powers were granted and privileges confirmed. This amendment of the charter marks an event of great political importance. Hitherto Virginia had been governed by the London council. Now all this was changed. The great general courts met. The company included in its membership 659 persons and 56 tradeguilds, of whom 21 were peers, 96 knights, 11 clergymen and physicians, besides captains, engineers, gentlemen, merchants, and others variously classified. The time was the beginning of the struggle of the people to maintain their liberties against the tyrannical usurpations of the Stuart kings. A great democratic assembly had been unwittingly unloosed by the King. It was the forerunner of free government in Virginia. In the course of the next decade King James realized that he had granted away his powers of control over the company. It was then that by a series of arbitrary acts he forced the annulment of the charter of 1624. The Spanish ambassador said to the King, "The Virginia Courts are but a seminary to a seditious parliament." Twenty years after their establishment Charles I was confronted with the seditious Long Parliament.

2. **Territory Occupied in 1619.**—In the year 1619 a population of about 2,000 was settled along the James River for a distance of 100 miles inland, and occupied a strip on both banks of the river of an average width of five or six miles. There were eleven recognized local divisions variously called cities, hundreds, and plantations.*

3. **Popular Rights against King's Prerogative.**—The local government of the colony by a governor and council appointed by the council in London had never been satisfactory. The situation had become aggravated by the conduct of Argall one of the governors sent out by the company. The people clamored for self-government. About this time a great change was wrought in the affairs of the company at home. Sir Edwin Sandys, a leader of the country party in Parlia-

* A city in extent of territory was equivalent to a county. Hence we have James City County.

ment, defeated the King's favorite for the office of treasurer of the company. Sir Edwin and his followers represented the energy and public spirit of the time. Side by side stood with him many noble men, not least among which was the idol of Shakespeare, the brilliant, vesatile Southampton. Sandys and his friends believed in the rights of the people as against royal prerogative. King James said of him when it was proposed to make him treasurer of the company, "Choose the devil if you will, but not Sir Edwin Sandys." It is to him and his followers, men who represent the spirit of their age, that Virginia owes the introduction of representative government.

4. **First General Assembly in Virginia (1619).**—Acting under instructions from the company the respectable and able Governor, Sir George Yeardley, summoned an assembly of burgesses to be "elected out of each Incorporation and Plantation freely by inhabitants." Under this summons the first election ever held by men of English blood in America for members of a representative assembly, took place. Two members were chosen for each of the boroughs represented. We have no satisfactory knowledge as to the qualification of voters or the manner of conducting the election; but we may assume that the law and practice of English borough elections governed. The Governor, the Council and the Burgesses, together, constituted the General Assembly somewhat on the model of the General Court of Massachusetts, both being fashioned after their prototype, the old English shire-mote (county-meeting), possessing both legislative and judicial powers. The assembly met on July 30th, 1619, and was prorogued on the 5 day of August following. Sessions appear to have been held in 1620 and 1621, and at irregular intervals for some time thereafter.

5. **Ordinance Establishing a General Assembly (1621).**—The Assembly of 1619 seems to have been summoned under instructions given to Yeardley. By an "Ordinance and Con-

stitution" dated the 24 day of July, 1621, adopted at a great General Court of the Company in London, it was declared that from thence forward there should be two supreme councils in Virginia for the better government of the colony. The first was called the Council of State. It was appointed by the London Council, and the duties of its members were to advise and assist the governor, who was the head of the Council of State. The other great council consisted of the Council of State and "two burgesses out of every town, hundred, and particular plantation, to be chosen by the inhabitants." The official name of this aggregation of councils was, "The General Assembly." They were to be called by the Governor "once yearly, and not oftener, but for very extraordinary and important occasions."

6. **Scope of Powers Granted.**—The Governor had a veto. The Assembly had both legislative and judicial powers. No law of the Assembly was operative until ratified by the General Court under seal. But the Ordinance provided, that when the government of the colony is once well framed and settled accordingly .. .. no orders of court afterwards shall bind the said colony unless they be ratified in like manner in the General Assemblies." This Ordinance is the first written constitution establishing free government in America.

7. **The Forerunner of a Two-Chambered Legislature.**—At first the Governor, Council, and Burgesses sat together; but in time the Council came to form a sort of Upper House and sat apart. This change seems to have come about gradually. The first separation was the result of a quarrel between the Burgesses and the "old planter" Governor, Matthews, in 1658, when by action of the Burgesses the Council was excluded.

CHAPTER XXVI.

THE ORIGIN AND GOVERNMENT OF THE COUNTY.

1. **History of Its Formation.**—It has already been said that shires were formed in Virginia in 1634 "to be governed as shires in England," and that by 1643 the name shire had fallen into disuse and the old Norman-French name, county, had come into use in its stead. Counties were formed by legislative enactment. From time to time, as necessity seemed to require, the General Assembly passed acts for the establishment of counties of such size and with such boundaries as the public convenience seemed to demand. Natural boundaries, such as mountain ranges, watersheds, and streams, were adopted, whenever practicable. In the beginning, of course, a county frequently embraced a vast extent of territory; but, as population increased, these large areas were divided again and again, and new counties were formed. Sometimes a new county was formed by the division of a single county, and at other times by combining portions of two or more counties. Frequently county lines were altered, to suit the convenience of population, by taking a portion of one or more counties and adding it to a county already in existence. It will not be possible in this little book to trace the territorial history of each county. The acts creating counties not infrequently designated impossible boundaries. In other cases starting points were assumed, which can not be located with certainty. An effort is made here to locate, in a general sort of way, the extent of territory covered by Orange, Frederick, Augusta, Botetourt, District of West Augusta, Ohio, Yohogania, Monongalia, Fincastle, Montgomery, and Greenbrier counties;

because they may be regarded as the most important of the parent counties of the territory now in West Virginia. But accuracy is not claimed. To attempt to go into details would lead the reader into a maze of difficulties.

(1) **Orange (1735).**—Orange County, formed in 1735 out of Spotsylvania, was bounded by Hanover on the south and by the grant of Lord Fairfax on the north, and extended "westerly by the utmost limits of Virginia." Settlements had already sprung up in that portion, now within West Virginia, watered by the Potomac and its tributaries.

(2) **Frederick and Augusta (1738).**—In 1738 it was urged that there were enough people in Orange west of the Blue Ridge to form a new county. Accordingly, that portion of Orange west of the Blue Ridge was formed into two counties, Frederick and Augusta. Frederick was situated in the lower or northern part of the Shenandoah valley, with Winchester as the county seat, and included all of Berkeley and Jefferson and a part of Morgan. Augusta occupied the southern or upper part of the valley, with Staunton as the seat of justice, and included all of West Virginia, except the portion under Frederick, together with the whole of Virginia's undefined territory to the west as far as the Mississippi River. Kentucky, Ohio, Indiana, Illinois, Michigan, Wisconsin, and a part of Minnesota were included in the claim of Virginia. Fragments only of the original counties of Frederick and Augusta remain in Virginia, with their original names and county seats; the remainder of their territory has been carved into other counties.

(3) **Botetourt (1769).**—Botetourt was formed by the division of Augusta in 1769, and included the whole territory of Virginia to the south and west of the New River together with a vaguely defined territory lying to the east and north of the New and Kanawha rivers, and extending westward to the Ohio. Its area was reduced on the south by the formation of Fincastle (1772), and was limited and defined by the formation

of Greenbrier (1777). After the organization of Greenbrier Botetourt ceased to have any territory within the limits of West Virginia.

(4) **Fincastle (1772).**—Fincastle included the whole southwestern part of Virginia, south and west of the New River. Fincastle was one of the titles of Lord Dunmore, who was earl of Fincastle. Such was the hatred of the Virginian for their royal governor that he was driven out of the Commonwealth and the county bearing his title was extinguished by dividing it into the three counties of Kentucky, Washington, and Montgomery.

(5) **Montgomery (1776).**—Montgomery was formed in 1776. Some alterations were made in its boundaries within the next year, so that it came to occupy, in the main, the territory south and west of the Kanawha and New rivers now included in the State of West Virginia.

(6) **Greenbrier (1777).**—Greenbrier was formed in 1777 out of Botetourt and Montgomery, and included all the territory lying between the Kanawha and New rivers on the south, the Ohio River on the west, the Alleghany Mountains on the east, and a line on the north drawn from the top of the mountain where the line between Augusta and Botetourt crossed the same, across the State, running north fifty-five degrees west to the Ohio River. This line was the southern boundary of Monongalia, and the northern boundary of Greenbrier.

(7) **The District of West Augusta (1776).**—The District of West Augusta has no likeness among the divisions of Virginia territory. The name seems to have originated in popular usage to indicate the vast extent of Augusta County's territory situated west of the Alleghany Mountains. It was not a county; and yet counties were formed from it; and in 1775 the Virginia Convention recognized it as a county so far as to give it a representation of two delegates in the Convention. It was given boundaries in 1776; but the boundaries failed to

meet: one side was left open with undefined limits. Out of the District of West Augusta, in the same year, were formed the counties of Ohio, Yohogania, and Monongalia.

(8) **Ohio (1776).**—Ohio County, with its somewhat vague and indefinite boundary, included the greater part of Brooke, and all of Ohio, Marshall, Wetzel, Tyler, and most of Doddridge and Pleasants.* Its eastern boundary was the dividing ridge between the Ohio River and the Monongahela.

(9) **Yohogania, the Lost County (1776-1785).**—Yohogania represents the crude spelling of the time for Youghiogheny. It included that portion of West Augusta lying north of a line beginning at the mouth of Cross Creek (near Wellsburg) and following that stream to its head, thence to the head of Ten-mile Creek, thence with the road leading from Catfish Camp (near Washington) to Redstone Old Fort (now Brownsville), thence along the Dunlap road and Braddock road to the meridian of the head fountain of the Potomac. When the line between Virginia and Pennsylvania was finally adjusted, a large part of Ohio and Monongalia, and nearly all of Yohogania were absorbed by Pennsylvania. That part only of Yohogania remained, which lies now in the Panhandle of West Virginia north of Cross Creek. This fragment was added to Ohio County in 1785, and Yohogania disappeared from the map.

(10) **Monongalia (1776).**—Monongalia is thus described in the act creating the county:

"All that part of the said district (of West Augusta) lying to the northward of the county of Augusta, to the westward of the meridian of the head fountain of the Potowmack, to the southward of the county of Yohogania, and to the eastward of the county of Ohio."†

By subsequent acts the territory of Monongalia was extended

*It is difficult to identify exactly the territory included in Ohio.

†The name is derived from the Monongahela River; but in the spelling it was written *Monongalia*; indeed, *Monongalia* is frequently the way the name of the river is spelled in both legislative and court records of the time.

southward to the line running across the State north fifty-five degrees west, forming the northern boundary of Greenbrier.* This line was never established by any survey; but it is supposed to have been projected from a point in the eastern line of Pocahontas to the Ohio River somewhere in Jackson County. Monongalia therefore swept around Ohio County south of Pleasants to the Ohio River, included Wood and a part of Jackson, and about two-thirds of the northern half of the State of West Virginia, together with nearly or quite all of Greene, about one-fourth of Washington, and about two-thirds of Fayette counties in Pennsylvania.

2. **New Counties: Area.**—It requires an act of the Legislature to form a new county. The legislature has prescribed the manner in which an application for a new county may be made. No new county may be formed with an area of less than 400 square miles, nor with a population of less than 6,000; and no change in county lines can be made in the formation of a new county so as to reduce any county below those limits as to area and population.

3. **Changes in County Lines.**—It seems that changes in county lines may be made by the Legislature, without regard to area or population, in a manner prescribed by law, the chief formalities of which are notice of the proposed change, and a survey, for the information of the Legislature, showing courses, distances, boundaries, streams, and other natural objects.

4. **The County Seat.**—A courthouse and a jail are required to be built for each county, at a place established by law, called the county seat. In Virginia, in early times, it has been said, towns did not flourish. The county seat frequently contained little more than the county buildings, a tavern, a store, a blacksmith shop, and a few residences. It was frequently not an incorporated town at all, and the place received

* In 1780. See Hening's Statutes at Large, v. 10, pp. 114 and 351.

the name of the county. The county seat as well as the post office, for example, was Culpeper Court House or Ritchie Court House. In time the words "Court House" were dropped, leaving only the name of the county for the county town, as Culpeper, Virginia, or the town was incorporated under another name, as Harrisville, Ritchie County, West Virginia. At the present time not a single county seat in West Virginia retains the name of the county in which it is located.* The Legislature either determines the location of the county seat or confers upon the voters of the county the right to do so at an election to be held for the purpose.

5. **New Courthouses and Jails.**—Since 1885 new court houses have been required to be built of stone or brick, or both. The clerks' offices are required to be fireproof, or furnished with fireproof vaults or safes, for the safe keeping of records. The counties of West Virginia are rapidly assuming a just pride in providing handsome and durable public buildings, some of which are models of architectural beauty.

6. **Purposes of the County.**—The essential purposes for which counties exist may be grouped into three general classes.

(1) **For Purposes of Representation.**—Counties and boroughs in England early became the bases of representation in the House of Commons. But in the absence of towns in Virginia the county naturally in time became almost the sole unit. It has become the sole basis in West Virginia. In some States the towns as well as the counties elect members of the Legislature.

(2) **For Civil and Military Purposes.**—Under colonial Virginia the county was the basis of an important military organization; but now it is little more than an area for the enrollment of the militia. It, however, remains the chief area of

*Mr. John Fiske in his Civil Government in the U. S. p. 62, says that in 1883, there were in Va. 38, W. Va. 13, and S. C. 16 county seats designated by the names of the county with the words "Court House" added, as for example, Webster Court House. But he is certainly misinformed so far as West Virginia is concerned.

local order and government. It was in the beginning the only natural basis for a widely scattered, farming people. But as population grows denser, and new industrial and social conditions take place, the need of smaller areas of administration is claiming some attention.

(3) **For Judicial Purposes.**—The county forms the area in and for which courts are held and judicial proceedings are had.

7. **Government of the County.**—A brief suggestion of the outline of county government in Virginia as it was, will lead up to a better understanding of county government in West Virginia as it is.

(1) **Under Virginia.**—*A Lieutenant*, appointed by the Governor, stood at the head of the county. His duties corresponded, in the main, to those of the Lords Lieutenant of England. He was chief of the militia; a member of the Council; and a judge with high judicial functions.

The Sheriff came next as the executive officer of the county, whose duties were much like those of an English sheriff. He was appointed by the Governor, from among the justices of the county court, the senior justice usually succeeding to the sheriffalty.

A "Commission of the Peace," composed of justices, was appointed by the Governor, and held office during his pleasure, among whose powers and duties were the following: to hold county court for hearing ordinary cases; to levy the county taxes; to appoint surveyors of highways; to divide the county into precincts; and to act as the general administrative body for the county in all matters not otherwise provided for.

The Vestry of the Parish occupied the same relation to the Episcopal Church in Virginia that it did in England, and was the agency for the administration of the affairs of the Church, and for the care of the poor, until the statutes of religious freedom, passed in 1776, disestablished the Church. The vestrymen were originally elected; but in time they came to be a "close corporation," that is, they assumed and retained the

power of filling vacancies in their own body. In this system, says Mr. Ingle, "the dominant idea was gradation of power from the Governor *downward*, not upward from the people."

8. **The Supervisors of the County (1863-1873).**—The civil administration of the county under the new State was lodged in a board, composed of one supervisor elected annually from each township, which was made a corporation by the name of "The Supervisors of the County of ———." The number composing the board was equal to the number of townships in the county, which could not be less than three nor more than ten. A majority was a quorum. As a governing corporation the supervisors succeeded to all the rights and liabilities of the county under the old State.

9. **Meetings of Supervisors.**—They met at stated periods at least four times in each year at the courthouse of their county, and could hold special and adjourned meetings.

10. **Officers of the Board.**—The supervisors chose one of their own number as president, who had a general supervision of the property and affairs of the county, and performed special duties assigned to him by law, by ordinance, or by order of the board. They also appointed a clerk, who kept a journal of their proceedings, and transacted other business pertaining to his office. As his compensation he received certain fees, and an annual allowance fixed by the board. The president received three dollars and the other members of the board two dollars per day, for a number of days not exceeding twenty-five, and mileage.

11. **General Powers of the Supervisors.**—The chief powers of government exercised by the supervisors were the following: to superintend and administer the internal affairs and fiscal concerns of their county; to establish and regulate roads, public landings, ferries, and mills; to grant licenses; to lay, collect, and disburse the county levies; to appoint places for holding elections; to judge of the election, qualification, and

return of all county and township officers, including their own members; to ascertain the results of elections; to have the care and disposition of county property; to enact ordinances for conducting county affairs; and to punish by fine any violation of an ordinance.

12. **County Government by Justices (1873–1881.)**—The Constitutional Convention of 1872 turned back to the old Virginia idea of county government by justices of the peace. The townships, indeed, were suffered to remain, but they were called by the new name of districts. In place of the supervisor there was elected one justice of the peace (or not more than two) in each district, for a term of four years. A county court was created to take the place of the supervisors of the county, composed of a president, elected by the voters of the county for four years, and two justices of the peace; except that when a levy was laid a majority of all the justices elected in the county was required for a quorum.

13. **Sessions of the County Court.**—Six sessions of the court were required to be held during each year, two of which were limited to the police and fiscal affairs of the county, and the other four to the trial of causes and the transaction of general business, except that of laying the levy. The president received as compensation four dollars a day, and the justices, three dollars. The justices were so classified that they served in rotation with the president for the trial of causes and the transaction of general business.

14. **Corporate Rights Transferred.**—All the corporate rights which had been vested in the boards of supervisors of the counties, were transferred to the counties by name, by which they were given the right to sue and be sued.

15. **Administrative Powers.**—The administrative powers of the county courts, under the change, became substantially the same as those of their predecessors, the boards of supervisors. Their administration, either of the police and fiscal or of the

judicial business of the counties, was never satisfactory; and in 1881 dissatisfaction resulted in a change to the present system of commissioners.

16 Special County Courts.—The Legislature was authorized, on the application of any county, to create, by special act, another court in such county in place of the county court, if a majority of the voters assented thereto, "as well for judicial as for police and fiscal purposes, either separate or combined .. .. but with the same powers and jurisdiction herein conferred upon the county court .. .. ." This was a privilege which meant little. Whatever court might be created must be substantially the same old county court. The same provision in substance now exists in the Constitution. Under it Ohio and Preston counties have secured special acts creating county courts composed of one commissioner from each magisterial district instead of three from the county at large. But the only change is in the composition of the courts. Their powers and jurisdiction are substantially the same as in other counties.

17. County Government by Commissioners (1881–1900).—By an amendment proposed to the Constitution in 1879, which took effect January 1, 1881, the judicial and administrative system of the counties was reorganized and put upon a different basis. The name of the governing body is still the county court; and it is made a corporation by the name of "The County Court of ———— County:" but the members of the court are three commissioners, elected by the voters of the whole county, not justices of the peace chosen by districts. Two commissioners make a quorum, but two votes are always required to pass an order. The office of justice is incompatible with that of commissioner.

18. The Commissioners: Terms, Officers, and Sessions.—The commissioners, being no longer trial justices, are chosen to represent the business interests of the county. They receive two dollars a day for their services.

Their term of office is six years, and it is so arranged that only one is elected at each regular election in two years. No two can be elected from the same district.

The officers of the court consist of one of their own number, who is chosen president, and the clerk of the county court, who is the recording officer.

Four regular sessions are held in each year at times fixed by the court and entered of record. Special sessions may be called whenever the necessities of business require them.

19. **Jurisdiction and Powers of the County Court (1881-1900.)**—The jurisdiction and powers of the county court fall into two main classes, (1) judicial functions, and (2) police and fiscal powers.

(1) **Judicial Functions.**—Through their clerks the county courts have the custody of all deeds and papers presented for record in their counties. They have jurisdiction in the following matters:

In all matters of probate, i. e., the proof of wills:

The appointment and qualification of personal representatives, i. e., executors of wills and administrators of estates of deceased persons; guardians, i. e., those having charge of the person and estate of one under twenty-one years of age, or the estate without the person when a parent is living; committees, i. e., those who have charge of the person and estate of lunatics; curators, i.e., those having charge of the estate of a person under some legal disability:

The settlement of the accounts of all personal representatives, guardians, committees, and curators:

All matters relating to apprentices:

Contested elections for all county and district officers.

(2) **Police and Fiscal Powers.**—The county courts have the following police and fiscal powers:

To superintend and administer the internal police* and ficsal affairs† of their counties;

To establish and regulate roads, ways, bridges, public landings, ferries, and mills;

To lay and disburse county levies;

To provide at the county seat a suitable courthouse, jail, and clerks' offices, and to keep them in repair and supplied with furniture, books, stationery, fuel, and such other things as may be necessary;

To provide all such offices and buildings as may be desirable for county purposes;

To acquire and hold any lands, or lands and buildings, at the county seat, that may be necessary for county purposes, and to enclose, improve, and embellish the same;

To adjust boundary lines of their counties, change bounday lines of districts, and establish new districts;

To exercise such other powers, and perform such other duties, not of a judicial nature, as may be perscribed by law.

Under the last general grant of powers all sorts of minor duties have fallen to the commissioners. Only a few of the more impotrant ones can be noticed specially in the succeeding paragraphs.

20. The Fiscal Year: the Levy Term.—The fiscal year of each county begins on the first day of June. The commissioners are required to meet in each year, not later than July, and make up a statement of estimated receipts and expenditures for the current year. This session of the court, because it lays the levy, is popularly called "the Levy Court."

*The *police power* embraces in its broadest sense the whole system of internal regulation of affairs and preservation of order, and extends to the protection of the life, limbs, health, comfort, and quiet of all persons, and the protection of all property in county.

†The *fiscal power* relates to the public finances, or money affairs, of the county, such as laying, collecting, and disbursing the revenue, and duties and power incident thereto.

21. **Roads, Bridges, etc.**—The regulation of all county roads, ways, bridges, public landings, ferries, and mills, and the establishment thereof, are vested by law in the county courts. But the roads within incorporated cities and towns, which under their charters keep in repair their own roads, streets, and alleys, are not under the control of the county court. Nevertheless such cities and towns pay their general county levy, out of which general appropriations are made for the construction and repair of roads and bridges; but they pay no specific road tax to the county as do the districts.

(1) **A Waste of Money.**—Vast sums of money are expended annually on the highways of West Virginia, and yet there are few permanent and durable public roads. Repairs are made to be swept away by the next rain. No system of permanent improvements has prevailed, except in a very few counties. The great living question of the day is, How can permanent, durable highways be built in the county? The rising generation must solve this problem.

(2) **Another Waste of Money.**—It is necessary to bridge streams where the roads cross them. Often a large part of the expense of the county for any year is incurred in replacing bridges that have been swept away by flood, because they were not properly placed.

(3) **Toll Roads and Bridges.**—In the early history of the State many roads and bridges were built by private companies upon which a toll was required from passers-by. It seems that if it would pay a private company to build a road or a bridge as an investment, for the profit that may be derived from it by means of tolls, it ought also to pay the people of the county to build that road or bridge and keep the tolls in their pockets. The people are slowly learning this fact; but they are learning it. There are now but few toll bridges in the State and but one or two toll roads.

22. **Road Precincts: Road Surveyors.**—For the purpose of maintaining the roads each district is divided into precincts,

with consecutive numbers, for which an officer, called a surveyor, is appointed for the term of two years. The immediate superintendence of roads and bridges in his precinct is under the surveyor. He must see that they are kept in repair, of the proper width, well drained, and free from obstructions. He must remove all dead timber standing within thirty feet of the road. He places guideboards at the forks of roads; erects footbridges; orders out the laborers required to work the road; makes reports to the county court; and draws his pay. Is the surveyor worth his hire?

23. **The Road Laws.**—Many legislative attempts have been made to enact some law for constructing and maintaining roads that would be an improvement upon the "old log-rolling" method. But no Solon has yet appeared as the great lawgiver upon roads. The difficulties lie in the futile legislation that seeks to construct and maintain roads without expending the necessary sums of money. A permanent and durable road is expensive to make; but the redeeming feature lies in the fact that once made it is inexpressive to maintain. If all the money expended upon roads in any one county in twenty years, without having better roads at the end of the twenty years than at the beginning, could be expended at one time, in the proper building of a permanent roadbed, it would annually cost but a trifling sum to maintain the road. But herein lies the trouble: such a sum could not be had without issuing bonds; and counties are slow to incur a bonded debt even for constructing highways.

Every able bodied citizen between twenty-one and fifty years of age is required to work on the roads in the precinct in which he resides, not less than two nor more than four days in each year. A road tax may be levied also in each district. Any one may pay this tax to the collector, or he may work it out at a rate to be fixed by the county court, not less than seventy-five cents nor more than one dollar and twenty-five cents a day. This method prevails in the absence of the

adoption of any one of the alternate plans. It is called, derisively, the "log-rolling" method, because it is much after the plan of calling in the neighbors to roll the logs or husk the corn, designed as much for frolic as for labor, in vogue in pioneer times.

24. **Licenses.**—The consent of the county court is necessary to obtain a state license to keep a hotel, a restaurant, a saloon where intoxicating liquors are sold, a distillery or brewery, a pharmacy, a public bowling alley, billiard table, pool table, bagatelle table, or any table of a like kind, a shooting gallery and a skating rink. No such license can be issued, where the business is to be carried on within an incorporated city or town, without the approval of the council thereof. And no license for the sale of intoxicating liquors can be authorized by the county court within two miles of the corporate limits of any city or town, without the consent of the council thereof be first obtained.

25. **Public Buildings and Grounds.**—Almost unlimited authority is given to the county courts with respect to the public buildings and grounds of their counties. They are not limited to the lands absolutely necessary for the purposes of the county. They may purchase, or otherwise acquire, so much land as may be requisite or desirable for county purposes. The old Virginia law in 1860 authorized the purchase of as much as two acres, and wisely provided, that so much as was not occupied with the public buildings should be "planted with trees and kept as a place for the people of the county to meet and confer together." Under the police powers the county court may do almost anything it is not forbidden to do, which conduces to the safety, health, or comfort of the inhabitants.

26. **The Poor.**—Under the law of Virginia at the time of the formation West Virginia, the maintenance and care of the poor were committed to a board of overseers appointed from each district by the county court of the county. It was

a county board with corporate powers. Under the law of West Virginia as it existed prior to 1873, overseers of the poor were elected in each township; but they were little more than agents of the board of supervisors of their county, who succeeded to all the powers and duties of the board of overseers as is existed under the laws of Virginia. Following the Constitution of 1872 the law turned back to the Virginia plan of a board of overseers, which remained in force until 1881, when the present county court was made its successor, and overseers of the poor for districts became mere agents of the court. The fullest authority exists in the court to provide a county infirmary, workhouse, farm, stock, implements of husbandry, and such things as may be necessary for the use and benefit of the poor. It may employ an agent to take care of the infirmary and to have charge of the inmates thereof, upon such terms as may be agreed upon between him and the court. It may employ managers, physicians, nurses, and servants to take care of the poor, and may prescribe regulations and the discipline and order to be enforced. Any orphan with his consent may be taken from the infirmary by any society operating in this State, which has for its object the care of orphans, if the county court approves.

27. Other Duties of the County Courts.—Among the minor duties imposed upon the county court are the following: the offering of rewards for the destruction of noxious animals, birds of prey, or weeds; to provide for the abatement of nuisances prejudicial to the health of any of the inhabitants of the county; to offer rewards for fugitives from justice; to make regulations to secure the inhabitants from epidemic, contagious, or infectious diseases; to provide for the destruction of rabid animals, and animals suffering from any contagious or infectious disease; to appoint a sealer of weights and measures to have charge of the measures and balances provided for the county.

28. **Record Books to be Kept.**—The proceedings of the county court are kept in three seperate books, namely:

(1) One in which is entered proceedings in relation to contested elections; all matters of probate; the appointment of appraisers of estates; the appointment and qualification of personal representatives, guardians, committees, and curators, and the settlement of their accounts; and all matters relating to apprentices.

(2) One other in which is entered the proceedings, and the annual statement, in relation to the poor.

(3) And one other in which is entered all the other proceedings of the court.

But there are many other books of record kept in the office of the clerk of the county court, which will be explained in connection with a description of that office.

29. **The Sheriff of the County.**—The office of sheriff is of great antiquity in England. He is now the head man of the shire or county. Anciently he was elected, which is another evidence of the democracy of old institutions; but William the Conqueror took over the appointment to himself, since which time he has been appointed by the king, or some crown officer, out of a list of three nominated by the judges of the courts. In olden times in England the sheriff had judicial powers, i. e., he held courts and otherwise acted as a judge; but now he is merely a ministerial officer, i. e , he performs those duties imposed upon him by the law or the courts.

(1) **The Virginia Sheriff.**—The English method of appointment was followed in Virginia.* The county court annually nominated three of the justices of the county of whom the Governor appointed one. As a rule the senior justice in years of service was appointed; but the practice was not invariable. If all the justices should decline the office (which, it may safely be assumed, they never did) the court could nominate three other persons, one of whom might be appointed to the office.

* Codes of 1849 and 1860.
Wileys' Hist. Monongalia Co., 290, 291.

The old records of the county courts in any of the counties will disclose this method of appointment prior to 1850.

(2) **The West Virginia Sheriff.**—From the beginning the sheriff has been elected by the voters of his county. He holds his office for the term of four years, and is not eligible to reelection, because the nature of his office is such that he could bring improper means to bear to perpetuate himself in office. His functions are purely ministerial, that is, his chief duties are to attend upon the courts, and obey their orders. He serves all writs or notices, subpoenas witnesses, arrests criminals, empanels juries, seizes and sells property when ordered to do so by the courts, has charge of the jail, executes sentence upon criminals, is charged with the preservation of the peace in his county and perform a multitude of duties prescribed by the law. If he be personally interested, the county court may appoint one or more constables to act in his place. He is required to give a heavy bond for the faithful discharge of his duties, by reason of the fact that he is collector of all state, county, and district taxes levied in his county, and by virtue of his office is treasurer of the county. He receives for his compensation fees, an annual allowance by the county court, and commissions on taxes and other monies received.

30. **The Prosecuting Attorney.**—The prosecuting attorney is the law officer of the county. He is elected for the term of four years by the voters of his county. He is required to prosecute all offenders against the law within his county; to appear as attorney in all actions, suits, and proceedings in which the state, county, or any district therein may be interested. He is *ex officio*, i. e., by virtue of his office, a member of the county board of health; he may appoint an assistant with the assent of the circuit court; he may issue subpoenas for witnesses before the grand jury as well as in criminal cases in court. He receives for his compensation certain fees for each offender convicted, provided the fee can be made off

of the convict, together with an annual allowance fixed by the county court; but none of his fees are payable out of the county or state treasury.

31. **The Assessors.**—Assessors under the Virginia law were called commissioners of the revenue; and we sometimes hear the old men speak of them by that name. Some counties constitute a single assessment district, while the larger ones are divided by act of the legislature into two districts, for each of which an assessor is elected by the voters of the whole county, for the term of four years. It is the duty of the assessors to ascertain the value of all property required to be listed for taxation, and to make up the tax lists in books furnished for the purpose, called the "Assessor's Books," for each year; to enroll the militia; to list the voters; to make a registry of all births and deaths within his county; to issue certificates for state licenses in certain cases; to report to the prosecuting attorney any violations of the penal laws; and to do sundry other acts pertaining to his position as revenue officer of his county. He receives some small fees, but his chief compensation consists of an allowance for his services made to him annually by the county court.

32. **The Surveyor of Lands.**—A surveyor of lands is elected by the voters of each county for the term of four years. He is required to keep his office at the courthouse in the office of the clerk of the county court where all books, papers, and public records are to be lodged in the official possession and control of the clerk, in order that they may be inspected by the public. The clerk may make and certify copies from the records in the absence of the surveyor. The office was once a highly important and lucrative one. It was upon the surveys made and entered of record by the surveyor that the original patents (the land titles) were founded. The surveyor has few duties to perform now, except to make such surveys and reports as the court may order, for

which he receives fees. He receives no salary or annual allowance.

33. **The Superintendent of Free Schools.**—A county superintendent of free schools is elected at the regular election in November, for the term of four years from the first day of July following the election. This is the only function which the county plays in the educational system. The superintendent is required to be a person of good moral character, of temperate habits, literary acquirements, and skill and experience in the art of teaching. He is required to visit each school in his county once in each year; to supervise the work of each school; to note the character and condition of the school houses, furniture, and fixtures, and to make such recommendations to the boards of education and trustees as he may think will contribute to the comfort and progress of the pupils; to promote the organization of institutes for the improvement of the efficiency of the teachers; to conform to the instructions of the state superintendent; to serve as the organ of communication between the state superintendent and the district boards; to make certain important reports to the state superintendent; and to perform a great many other duties calling for knowledge, judgment, skill, and experience of the highest order. It would seem that an officer from whom so much is required, from whom so much is expected, and from whom so much is possible, should be well paid; but he receives a meager salary, depending upon the number of schools in his county, which ranges between three hundred and five hundred dollars.*

34. **The County Boards.**—In the preceding sections we have pointed out the vast range of powers and duties which devolve upon the county court and the county officers in the administration of public affairs of the county. But there are some instances of local administration by county boards, which are appointed sometimes with and sometimes without the participation of the county court. These local boards are (1) the county board of examiners; (2) the school book board; (3) the

* Acts 1901, ch. 69.

county board of health; and (4) the board of jury commissioners.

(1) **The County Board of Examiners.**—For the purpose of examining into the qualifications of teachers in the free schools of the county there is a county board of examiners composed of the county superintendent, who is president of the board, and two experienced teachers of the county. The two members of the board are appointed by the presidents of the boards of education of the districts in the county, upon the nomination of the county superintendent. The qualifications required of members of the board are that each shall have received a teacher's state certificate or a number one county certificate, or shall be a graduate of one of the normal schools. They receive as compensation three dollars a day for each day employed in discharge of their duties, which is paid out of the fees received from the teachers examined.

(2) **The School Book Board.**—It was formerly the practice of the Legislature to prescribe a uniform list of text-books upon the subjects to be taught in the free schools of the State, and to cause a contract to be entered into for supplying them for a limited period of years, usually five, at a fixed price. But a few years of experience demonstrated the unfitness of a legislative body to deal with a question of this character. Both the Legislature and the people interested in education felt the necessity of reposing this authority in some body of men separate from the Legislature. Many plans were suggested; but in 1897 an act was passed establishing in each county a school book board composed of the county superintendent, who is the secretary, and "eight other reputable citizens and taxpayers of the county," to be appointed by the county court. At least four of the number must be freeholders and not school teachers; and at least three must be engaged in teaching in the county, each holding a number one teacher's certificate or its equivalent. Not more than five of the eight may belong to the same political party. Thus the question has come to be recognized as a

local one to be disposed of by a county board. The plan makes it possible for an intelligent board in each county to adopt such books for use in the schools as may seem to the members thereof, from their experience, best suited to the needs of that particular county.

(3) **The County Board of Health.**—The county board of health is composed of the president of the county court, the prosecuting attorney, and three other intelligent and discreet persons (one of whom must be a physician qualified to practice medicine) nominated by the county court and appointed by the state board of health for the term of two years. The physician so appointed is the health officer of the county and the executive officer of the board. He receives for his services a yearly salary fixed by the county court. The other members receive their expenses only when actually employed. The jurisdiction of the county board of health does not extend to any city or town in the county which has its own local board of health. All county and local boards are subordinate to the state board and must act in harmony with it.

The powers and duties of the local boards of health are necessarily almost unlimited within their sphere. They have power to make such regulations as may be necessary and proper to prevent the outbreak and spread of endemic, epidemic, infectious, and contagious diseases, such as cholera, smallpox, scarlet fever, diphtheria, and the like. The board is clothed with the fullest powers to inspect, cleanse, and purify premises; and for this purpose any member may enter upon any premises, at any time except in the night time. Any person who fails or refuses to comply with any lawful requirement of the board, is guilty of a misdemeanor, and upon conviction may be fined as much as one hundred dollars.

Reports required of physicians. It is the duty of every practicing physician to report promptly to his local board of health all contagious, infectious, endemic, and epidemic

diseases under treatment by him, and the local board is required to report the same to the state board at least once in three months.

Quarantine may be defined as the enforced isolation or separation of any person or place infected with a contagious or infectious disease. The local boards of health may declare quarantine, but immediately upon so doing notice must be given to the member of the state board of health, in the congressional district wherein the quarantine is established. It is the duty of the state officer so notified to investigate the necessity for the quarantine. In the meantime, however, all regulations of the local board must be observed until the quarantine is raised. The local board may confine to his own residence any infected person liable to spread contagion or infection; but if he has no residence, then to some place appointed for the purpose, and may employ guards to enforce quarantine. Failure or refusal to obey the orders of the board is punishable by heavy fines. The expenses incurred by the local board are charges upon the county treasury.

(4) **The Board of Jury Commissioners.**—There are two jury commissioners for each county, appointed by the circuit court for the term of four years. They must be citizens of good standing, residents of the county, and well known members of opposite political parties. They may be removed from office by the court for official misconduct, incompetence, drunkenness, neglect of duty, or gross immorality. They are required to keep a record of their proceedings in a well bound book, which is preserved in the office of the clerk of the circuit court. They prepare lists of persons qualified to serve on juries, from which the juries for each term of court are drawn by lot. No person who requests, either in person or by another, can be placed on this list. The commissioners receive a compensation of two dollars a day for their services.

CHAPTER XXVII.

MINOR CIVIL DIVISIONS OF COUNTIES.

1. **The Parish: its Ancient Origin.**—The earliest subdivision of the Virginia county was the parish. The beginning of the development of the parish in England dates from the introduction of Christianity into Britian. The Parish was both a civil and an ecclesiastical area. It was both a civil township, with the constable at its head, and a church body, under the presidency of the parish priest. It was the area for the collection of tithes and the disbursement of the fund for the relief of the poor. It was usually identical in area with the township, but it often embraced a number of townships. In Virginia it sometimes included more than one county. The same necessity (that of raising money by a self-taxing body) which produced the English House of Commons, in the thirteenth century, produced also the vestry in the parish meeting with its church wardens and other officers.

2. **The Parish in Virginia.**—With the establishment of the Anglican Church in Virginia as the state religion, came the reproduction of the contemporary English parish. With the enactment of the statutes proposed by Jefferson for the disestablishment of the Church and the guaranty of religious freedom, it disappeared; and its civil functions came to be administered by the county. The executive officers were the churchwardens, chosen by the vestry or nominated by the county court. They collected the parish levies and disbursed them; watched over the morals of the community; and made presentments to the county court, in the nature of indictments, in some instances, among the number being drunken-

ness and swearing. The sexton and the clerk were important officers. "The duties of the clerk who assisted the minister were multifarious. In the absence of the rector he performed all the offices of the church except matrimony and the sacraments. . . . He kept a record of all births, marriages, and deaths." The parish, indeed still survives; but it is an undefined area with which the State has nothing to do. The community in which is situated an Episcopal Church is vaguely called a parish, and has its vestry and churchwardens; but these are merely the organs of the administration of church affairs.

3. **The Constabulary District.**—No subdivision of the county in Virginia appears to have been made after the Revolution until 1807, when the county courts were required to lay off their counties into convenient districts and to appoint one or more constables for each.

4. **The Magisterial District.**—In 1851 a constitutional provision was adopted which provided for laying off the counties into districts for the election of justices of the peace, and constables. Heretofore all officers of the State and counties, except members of the General Assembly, and overseers of the poor, had been appointed. But from this date until the admission of West Virginia, the State and county officers became elective, and justices and constables were elected by districts.

5. **The Introduction of the Township.**—The framers of the constitution, under which West Virginia was admitted as a State planned for the introduction of the township as a unit of local self-government, modeled in a limited way upon the New England township. The effort was a novel experiment. It is not easy to transplant successfully the local institutions of one community, in which they have grown up with the growth of the community, into the strange environment of another community, in which have grown up institutions of a different type. All such changes must be gradual, and require

time to adapt them to new conditions. Trees and plants that grow and thrive in one state do not necessarily grow and thrive in every state; or if being transplanted, they may be encouraged to grow, the species produced often varies in some respects from the original in its native place. It is so with systems of government.

(1) **Scheme of the Township System.**—The counties were divided into not less than three nor more than ten townships. They were bodies corporate, that is, they could sue and be sued as corporations. The voters were required to meet in stated and special township meetings to transact such business relating to the township as was authorized by law. A full set of officers was annually elected to carry on the business of the township:

A Supervisor was a sort of township president, and represented the township on the board of supervisors of the county.

A Clerk was the keeper of accounts, books, papers, and records of the township. He was required to keep an office at some convenient place, to attend all meetings of the voters of his township, to keep a journal of their proceedings, and in general to perform such clerical duties for the township as are now performed by the county clerk for the county.

A Treasurer, who was authorized to receive and disburse the monies belonging to his township; but he was not the collecter of taxes: the sheriff of the county performed this duty and paid the money over to the treasurer. Orders on the treasurer were issued when authorized by the township meeting, signed by the clerk and countersigned by the supervisor. They were payable upon presentation, if there were funds for the purpose.

A Township Committee of three freeholders was appointed annually in township meeting, who audited the treasurer's accounts, and submitted to the township meeting an item-

ized statement in writing showing the receipts and expenditures proposed for the current year, which the meeting could adopt as a whole or modify and adopt and enter upon the journal.

A Surveyor of Roads for each precinct in the township was chosen annually.

An Overseer of the Poor was selected annually, who acted under the directions of the supervisors of the county.

A Justice of the Peace was elected once in four years; and if the white population of the township exceeded 1200 an additional justice was chosen.

As many Constables as justices were elected at the same time.

The School Commissioners constituted a corporate body styled "The Board of Education of the Township of———," one member of which was annually elected for the term of three years.

Two Inspectors of Election were chosen annually, who, together with the supervisor, conducted the election in the township; and in case there was more than one voting place in the township the supervisor and inspectors each appointed an inspector for each voting place.

Other Officers might be provided for by law.

(2) **Powers of the Township Meeting.**—Very broad powers were given to the township. It had power to purchase, hold, and dispose of real estate for the public use and benefit of its inhabitants; to receive and hold grants, devises, bequests, and conveyances for the same use and benefit; and to make all contracts and agreements that might be necessary and convenient in the proper exercise of its corporate and administrative powers. In enlargement of the powers granted by the Constitution the Legislature empowered the township meeting to enact by-laws for its own government and the regulation of the affairs of the township, but under some limitations imposed by law; and to enact limited fines

for the violations of the by-laws. The township meeting was also given power to lay special levies for the following purposes:

For the maintenance and improvement of free schools;
For procuring the necessary land and erecting school houses and furnishing the same;
For purposes of public roads and bridges;
For purchasing land and erecting thereon a township hall for the use of the township meetings and for the purposes of the government;
For purchasing land and maintaining thereon a public cemetery.

In a word the design looked forward toward making the township the primal unit of local self government instead of the county. It was not hampered by constitutional handicaps. It could be moulded, enlarged, or diminished to suit the conditions of the people.

(3) **Working of the Township System.**—Prior to 1852 a property qualification had debarred many citizens from the right to vote, and that right, when it existed, had been exercised only in the choice of members of the General Assembly. During eleven years only, after 1852, had free, white, manhood suffrage been exercised, carrying the right to vote for all state, county, and district officers, including judges. The county had always been the unit of local government, administered prior to 1852 by appointees of the Governor. The people were not accustomed to meeting in primary assembly for the transaction and administration of the affairs of township government. Notwithstanding all this the township system was put into operation and was successfully administered during a period of nine years. But by 1872 an unfriendly reaction had overtaken it.

(4) **Why the Township was Abolished.**—The Constitutional Convention (1872) was called right on the heels of the Flick amendment, which restored the right to vote to the

citizens of the State who had been disfranchised for participation in the rebellion or for sympathy with it. It was an unfortunate moment at which to call a constitutional convention. Prejudice was rife, and its fury was not spent for another decade. The thrusting of the ballot into the hand of the recently freed negro drove great numbers of men, who had espoused the cause of the Union, back to their old party affiliations before the war. The membership of the majority in the convention represented all the reactionary elements precipitated by the Civil War. Indeed the party which had organized the State and had put the machinery of government into operation, was represented by the bare minority of twelve out of a total membership of seventy-eight, and these were dubbed the "twelve apostles." The township system was looked upon with prejudice as an importation. This was enough. It was doomed: even the word township was erased from the statute book; and in its place was restored that cumbrous old piece of machinery of county government, known as the county court, as it existed in Virginia before the war. It was so out of date and unsatisfactory that in 1881 an amendement to the constitution provided for the present system of county commissioners.

6. **The Magisterial District.**—The magisterial district plays a small part in the police and fiscal affairs of the county. But the barest remnant of the extensive functions exercised by the township survive to the district. It is still the area for the election of one or more justices and constables; and their jurisdiction is not limited to the district, but extends throughout the county. A separate tax is levied upon each district by the county court for local road purposes, in addition to the general levy, which is expended or worked out under the supervision of the surveyor of roads for the different road precincts in the district.

7. **Subdivision of Magisterial Districts.**—Magisterial dis-

tricts are subdivided into road precincts and election precincts.

(1) **Road Precincts: Surveyor of Roads.**—The county court of each county may divide the several districts into road precincts, which are designated by numbers. Boundary lines are established, which are entered of record in the order book of the court. No road precinct includes any part of an incorporated town or city, which, by the provisions of its charter, maintains its own roads, streets, and alleys. A surveyor of roads is appointed by the county court for the term of two years. He must be a resident of the precinct for which he is appointed. Any person so appointed is required to serve, or forfeit twenty dollars; but the court may remit the forfeiture. The surveyor, under the direction of the county court, superintends the maintenance, construction and repair of all county roads and bridges. He receives a compensation not exceeding one dollar and fifty cents for each day necessarily employed in performing his official duties.

(2) **Election Precincts.**—For the the purposes of elections magisterial districts are divided into election precincts, each one designated by a number, and having established boundaries. Each precinct must have one voting place only, and as nearly as practicable 200 voters; but no precinct shall contain more than 250 voters. A magisterial district must contain at least one voting precinct. The county court, whenever the public convenience may require it, may change the boundaries of any precinct, divide any precinct into two or move precincts, consolidate two or more precincts into one, or change any place of voting. But these extensive powers must be exercised in accordance with many regulations prescribed by law. The county court is required to keep an "Election Precinct Record," lodged in the office of the clerk of the circuit court, in which is entered every order relating to any precinct or place of voting in the county. It may be seen and examined by any citizen of the county.

CHAPTER XXVIII.

GOVERNMENT OF THE SCHOOL DISTRICT.

1. **The School District: its Purposes.**—No system of self-government can long continue without intelligence on the part of the people who exercise it. Schools increase intelligence; intelligence makes good citizens; and good citizens make good government. West Virginia therefore put into the structure of her state government the corner stone of a system of primary free schools and general education. The township, as we have seen, was at first made the basis of educational work. The present district, so far as education is concerned, remains with practically the same functions as the township. The school districts in every county are identical in territorial extent with the magisterial districts, except where, in some instances, the Legislature, by special law, has carved out of some district, or has pieced together out of portions of two or more districts, independent districts.

2. **The Boards of Education.**—It would be a useless task to attempt to trace the various changes in the law with respect to education. Suffice it to say that the board of education of each district consists now of a president, elected for the term of four years, and two commissioners, elected for the same term, one of whom only is elected every two years. Vacancies in the board are filled by the county superintendent. The board of education of each district is a corporation by the name of "The Board of Education of the District of————." It is required to meet on the first Monday in July of each year, and at this meeting to appoint a secretary; to determine the number of teachers to be employed in the several subdis-

tricts; to fix the salaries that shall be paid to teachers; to appoint one trustee for each subdistrict; to fill vacancies in the office of trustee; and to levy a tax for the support of the primary free schools of its district, not exceeding fifty cents on every one hundred dollars of the taxable valuation of property. If the levy should not be laid at this meeting, it must be laid as soon thereafter as practicable. Other meetings may be called at the discretion of the board.

3. Powers and Duties of the Board.—The powers and duties of the boards of education are numerous and can be studied in detail only from the laws and from the decisions interpreting the laws. In general, it may be said, the boards determine the number and location of schools; establish and alter subdistricts; and control and supervise the schools and school business of their districts.

4. The Secretary of the Board.—The secretary is not a member of the board: he is merely the recording officer, the keeper of accounts, and the custodian of all records, papers, and documents belonging to it. He performs such clerical duties as are prescribed by law or required by the board, and receives a small compensation fixed by the board.

5. Subdistricts.—Each subdistrict into which the districts are divided by the boards, is designed to contain as near as practicable not less than forty youths between the ages of six and twenty-one years. But every village containing fifty or more inhabitants is entitled to be included in one subdistrict. It should be laid off with reference to the convenience of the inhabitants. Any person feeling aggrieved by any decision of the board of education of his district upon any question affecting the number of subdistricts or the boundaries thereof, may appeal to the county superintendent by presenting a petition, signed by himself and five other residents of his subdistrict, stating the action of the board and the grounds of his complaint. Upon the hearing the decision of the superintendent is final.

6. Trustees of Subdistricts.—The law requires the board of education to appoint annually for the term of three years one intelligent and discreet person as a trustee in each subdistrict, so that there shall always be three trustees in office. They act in all things subject to the revision and correction of the board. Their acts may be revised upon motion of any member of the board, or upon complaint in writing of any three taxpayers of their subdistrict. The trustees are merely the agents of the board; they are not a corporation.

7. Powers and Duties of the Trustees.—Among other powers and duties the trustees have charge of the school in their subdistrict, and meet at the schoolhouse therein on the third Monday in July of every year for the purpose of appointing a teacher or teachers. They are required to visit the school; to see that the houses, grounds, furniture, apparatus, and library are kept in good order; to do whatever may be necessary and proper for the preservation of the property and the promotion of the progress, health, and morals of the pupils; to do many other acts prescribed by law; and to make reports annually to the board of education of their district, containing an inventory of all public property under their control.

8. Teacher and Pupil.—The teacher must be a person of good moral character, of temperate habits, and sixteen years of age and upwards. He must be in possession of a certificate authorizing him to teach, issued upon an actual examination before the board of examiners upon the branches required by law to be taught in the primary free schools of the State, that is to say, orthography, reading, penmanship, arithmetic, English grammar, physiology, general, United States, and state history, general and state geography, single entry bookkeeping, civil government, and the theory and art of teaching.* If the application to teach be for a high

* It is difficult to reconcile sections 11, 28, and 29 of the school law. There is evidently some error in the revision of these sections in the Acts of 1893. It is hardly possible that it was the intention to require the Theory and Art of Teaching to be taught in the primary schools.

school, the examination shall include the additional branches required to be taught in the school. Three grades of certificate are issued, graded according to the proficiency of the applicant. State certificates are also issued. The teacher has reposed in him a great trust. For the time being he stands in the place of the parent, with the same rights to govern the school that the parent has to govern the family. He should govern kindly but firmly. Every pupil owes to the teacher the most cheerful obedience. It is by first learning to obey that one acquires the ability to rule wisely. Respect for the authority of the teacher is respect for the authority of the law.

9. **The School Term.**—The length of the school term fixed by law is five months in every year; but any district may, by a majority vote adopt a longer term. In many counties of the State some of the districts have increased the term to five and six months in country communities, while in the densely populated places eight and nine months is the usual term.

10. **The Compulsory School Law.**—In 1897 a compulsory school law was enacted, which requires every person, having under his control any child between the ages of eight and fourteen years, to cause such child to attend some school. This requirement is enforced under the penalty of misdemeanor punishable by small fines. The result of this law has been good. A marked increase in the attendance upon the public schools is noticeable in the State at large.

11. **The Schools for Colored Children.**—It is the fundamental law of West Virginia that white and colored persons shall not be taught in the same school. The education of colored children is provided for in separate schools upon an equal footing with the white children. The trustees of every subdistrict are required to establish a primary school for colored children, whenever the enumeration therein for school purposes amounts to fifteen. Subdistricts may be combined in order to make up a school for colored children. And

even in subdistricts where there is a less number of colored children than fifteen, their education must be provided for in the proportion which their number bears to the number of white children. The State also provides liberally for the higher and industrial education of colored persons.

12. **The Independent School District.**—It has been shown that the magisterial districts are also school districts. But the Legislature often creates other school districts, which are usually called independent school districts. The farming communities as a rule do not want their schools continued longer than five or six months in any year; but the towns and cities, and the densely peopled areas round about them, frequently desire longer terms. In the towns and cities the temptations to idleness and vice are greater than in the country, and it is better that the children be kept in schools than allowed to associate together in habits of idleness. In order to establish an independent district it is necessary to obtain from the Legislature an act, which is called a charter, establishing the boundaries of the district, creating a board of education for its government, defining the powers and duties of its officers, and providing for the management and control of the affairs of the districts. While the cities and towns are usually the centers of such districts, outlying portions of contiguous territory are often included. The question of the adoption or rejection of the charter is submitted to the voters of the district or districts from which the proposed independent district is taken. Perhaps a better understanding of an independent district can be had from a study of the features of some one taken as a type. The Morgantown independent school district represents one of the most carefully prepared and elaborate charters that has yet been adopted; and an outline of its main features is here presented.

13. **The Morgantown School District.**—The Morgantown school district embraces all the four incorporated towns of Morgantown, South Morgantown, Seneca, and Greenmont,

together with the unincorporated suburbs of East Morgantown, West Morgantown, North Morgantown, and the densely populated communities in the neighborhood. It includes part of both Grant and Morgan districts. Its extreme length is about three miles and its average width about a mile and a half.

(1) Board of Education.—Like all other school districts this one has a board of education, which is a corporation by the name of the "Board of Education of the Morgantown School District," by which name it may sue and be sued; contract and be contracted with, and has a common seal. It is composed of five commissioners, who are elected for the term of five years, one of whom is elected annually in January, at the regular election for town officers. It is invested with the same rights, exercises the same powers, performs the same duties and is governed by the same laws as boards of education of other districts, except so far as the charter provides a different law. It may purchase, hold, and grant estates, personal and real, and make ordinances, by laws and regulations, consistent with the laws of the State, for the government of all persons under its authority, and for the ordinary conduct of the affairs entrusted to it. It may prescribe a uniform list of text books; furnish books and stationery for indigent pupils; furnish all apparatus and books, if the board so determines; incur any expense necessary to make the system efficient for the purposes for which it was established; create such schools as it may deem fit including a high school, and one or more schools for colored children; appoint the teachers; lay the levy for support of the schools; and issue bonds for the erection of buildings, not exceeding five per centum of the taxable value of all property in the district, if ratified by three-fifths of the voters of the district voting at an election held for the purpose.

(2) Secretary—A secretary is appointed by the board, who perform substantially the same duties as the secretary in other districts.

(3) **Superintendent.**—The most important officer is the superintendent, who is appointed by the board and whose salary is fixed by the board at twelve hundred dollars a year. His duties are chiefly such as the board may prescribe.

(4) **Examining Committee.**—The superintendent and two persons appointed by the board constitute a committee to examine all applicants for positions as teachers in the district. The manuscripts of every applicant, with the committee's grades thereon, are delivered to the board, by whose order, after thorough examination of the grades, if approved by the board, certificates to teach are issued, graded in accordance with the requirements of the general school law. The subjects for examination are prescribed by the superintendent with the approval of the board. A high standard of qualification is exacted.

14. **The Sources of Revenue for Schools.**—There are three sources of revenue provided for the support of the free schools of the State, namely, (1) the permanent invested school fund, which is designated by law as the "School Fund;" but it is popularly often spoken of as the "invested school fund" or the "irreducible school fund;" (2) the "General School fund;" and (3) the local levies, which are divided into two separate funds called the "Building Fund" and the "Teachers' Fund." We shall next consider the several funds and the boards and officers by which they are levied, invested, controlled, and accounted for.

(1) **The School Fund.**—The founders of the State desired to build up a permanent fund the income of which only, in the nature of interest or dividends, should be applied annually to the support of the free schools throughout the State, and to no other purpose whatever. This fund is made up from the following sources

All money accruing to the State from forfeited, delinquent, waste, and unappropriated lands;

All money accruing from lands sold for taxes, before the formation of the State and purchased by the State of Virginia, if afterwards redeemed or sold to others than the State of West Virginia;

All grants, devises, and bequests made to the State, for the purposes of education;

All such grants, devises, and bequests to the State, when the purpose is not specified;

The just share of the State of West Virginia in the "literary fund" of Virginia;

Any sums of money, stocks, or property, which West Virginia shall have the right to claim from the State of Virginia for educational purposes;

The proceeds of estates of persons who may die without leaving a will or heir;

The proceeds of all escheated lands, that is, land falling back to the ownership of the State through any default or confiscation;

The proceeds of taxes levied on the revenues of corporations;

All money paid as an equivalent for exemption from military duty; and

Such sums of money as may from time to time be appropriated by the Legislature for the purpose. But any portion of the interest of the fund remaining unexpended at the end of any fiscal year, is added to the principal of the fund; and all taxes arising from delinquent lands, except taxes due the State are refunded to the county or district in which the same were levied.

(2) **The Board of the School Fund.**—The Board of the School Fund which is a corporation, for the investment, management, and control of the fund under such regulations as may be perscribed by law, consists of the Governor, who is president of the board, the Superintendent of Free Schools, the Auditor, who is secretary, and the Treasurer. The board

is required to invest the fund in the interest bearing securities of the United States or of the State of West Virginia, that is to say, in interest bearing bonds; and if these cannot be had, then in such other solvent interest bearing securities as may be approved by the board. West Virginia owes no debt and has no bonds. United States government bonds can not always be had as an investment; so the fund is frequently invested in city, town or county bonds, in bank stock, in mortgages upon real estate, or is merely deposited in banks that will pay a low rate of interest for its use.

(3) **The General School Fund.**—Another fund, which is annually distributed among the several counties of the State in proportion to the latest enumeration of youths made for school purposes, is called the "General School Fund." It is made up of the interest derived from the "School Fund;" the net proceeds of all forfeitures and fines accruing to the State under the laws thereof; the State capitation tax of one dollar upon each adult, male inhabitant; and the proceeds of a State tax of ten cents on each one hundred dollars of the valuation of all real and personal property in the State.

(4) **Distribution of the General School Fund.**—On or before the tenth day of July in each year the Auditor is required to give notice to the State Superintendent of Free Schools of the total amount that is distributable among all the counties of the State. The Superintendent ascertains the share of each county and gives notice to the Auditor and to each county superintendent. Each county superintendent, upon receiving notice, ascertains the proper share of each district and independent district in his county, and gives notice to each board of education of the amount, and also notifies each board that the amount cannot be drawn until the district levies, required by law, have been laid. Upon being notified by the secretary of the board of each district in his county that the district levies have been laid, the county superintendent issues an order called a requisition, directing the Auditor to draw his

warrant upon the Treasurer of the State for the amount due each district, payable to the sheriff of the county, to be placed by him to the credit of the "Teachers' Fund" of the district.

(5) **The District Levies.**—Under the Constitution the Legislature may require either a district levy or a county levy in aid of the support of the free schools; but so far in the history of the State no county levy has ever been authorized by statute law. The principle has prevailed that the support of free schools, so far as is required in addition to the sums derived from the General School Fund is a local charge and should be provided for by the local unit of districts. Local levies are of two classes, namely, (1) one known as the "Building Fund," and (2) the other known as the "Teachers' Fund." The local levies are laid only when authorized by a vote of the people of the district. This vote is taken periodically, formerly once in two years, but now once in four years.

The "Building Fund" is levied annually by the board of education of the district on the first Monday in July of each year, or as soon thereafter as practicable, at a rate not to exceed forty cents on each one hundred dollars of the taxable valuation of all property in the district. This fund is designed to provide for schoolhouses, grounds, furniture, fixtures, and appliances; to keep the same in good order and repair; to supply fuel and other things necessary for the comfort and convenience of the schools; to pay any existing indebtedness against the "building fund;" and to pay all other expenses incurred in the district, which are not chargeable to the "teachers' fund." The proceeds of this tax, together with the proceeds that may be derived from any sales of schoolhouses or grounds, and any gifts, devises, or bequests for the purposes of the schools, other than the payment of teachers' salaries, go to make up the "building fund."

The "Teachers' Fund" is also levied annually by the board of education on the first Monday in July of each year, or as soon thereafter as practicable, at a rate not to exceed fifty

cents on each one hundred dollars of the taxable value of all property in the district. The rate must be high enough, within this limit, in addition to the sum derived from the General School Fund of the State, to produce an amount sufficient to support the schools of the district for at least four months in each year. The proceeds of this levy, together with the amount received from the General School Fund of the State, constitute a separate fund called the "teachers' fund." It cannot be used for any purpose except the payment of teachers' salaries.

(6) **The Board Compelled to Lay Levies.**—If a board should fail or refuse to lay any levy required by law, it may be compelled to do so by the circuit court of the county by means of a writ called a *mandamus*.

(7) **Duties of Officers in Regard to Levies.**—On or before the first day of July in each year the assessor must certify to the board of education of each district in his county or assessment district, the valuation of the personal property in the district, and the clerk of the county court must certify the valuation of all real estate within the district, so that the board may have the proper basis upon which to calculate the amount of levy required. When the levy is made it is certified by the board, through its secretary, back to the assessor so that he may extend the taxes on the property book, and to the clerk of the county court so that he may extend the taxes on the land book. The county superintendent is also notified that the levy has been laid, thereupon he is required to issue the requisition already described and deliver the same to the Auditor. A copy of the assessor's property book and also of the county clerk's land book are delivered to the sheriff of the county, who is charged with the amount of taxes entered therein for the district for the school purposes. The sheriff collects and disburses all school monies. He keeps a separate account of the "building fund" and the "teachers' fund" with the board of education of each district, and makes annual

settlements of his accounts with each board, which are recorded in the office of the clerk of the county court. He can pay out no money except upon the order of the board, signed by the president and secretary.

CHAPTER XXIX.

MUNICIPAL CORPORATIONS.

1. **Definition of a Municipality.**—A municipality is a borough, town, or city; possessed of a charter of incorporation conferring privileges of local self-government: in general it is any district, no matter by what name it may be called, which has certain rights of local self-goverment under a charter of incorporation.

2. **Reasons for Establishing Municipalities.**—When the population of any neighborhood becomes closely grouped together, the people have interests which demand more attention than can be given to them by the officers of any unit of rural government. The peace is seldom disturbed in sparsely settled communities, and the demand for peace officers is slight. But in densely populated communities the peace is oftener disturbed, crimes and misdeeds in many forms increase, and the public wants and needs become more numerous and important. "The fewer people to the square mile the fewer and lighter are the functions of government; the more people to the square mile the more and stronger must be the functions of government." Under certain conditions, therefore, and under certain forms of law, municipalities may be created with fixed boundaries and with defined powers for carrying on local self-government within the prescribed area.

3. **How Municipalities are Established.**—At the time of the formation of West Virginia many towns held charters which had been granted by special act of the General Assembly of Virginia. But the Constitution of West Virginia of 1872, prohibits the Legislature from passing any local or special law,

incorporating any city, town, or village, or amending the charter thereof, unless it contains a population of not less than 2,000. A general charter was enacted* for the government of all cities, towns, and villages, with a population less than 2,000; but the special charters granted before the enactment of this general charter are preserved; and so far as the general charter confers powers, which are not conferred by the special charter of any municipality theretofore created, such additional powers are deemed an amendment of the special charter without any affirmative action adopting such additional powers. So that in effect the general charter provides for the government of all municipalities with a population less than 2,000. But of course any municipality once incorporated under the general charter will continue to exercise its corporate functions until the charter is changed, although the population may increase to any extent beyond the 2,000. Any old special charter may be annulled, and the general charter substituted in its place, by a proceeding in the circuit court. Certificates of incorporation for communities with a population less than 2,000 are granted by a decree of the circuit court; the Legislature cannot grant such a charter. The application for a charter may be made by any number of responsible persons, and must be accompanied by an accurate survey and map of the territory, a census of the resident population, a notice of the intention to make the application, and of an election to take the sense of the voters on the question of incorporation; and a certificate of the result of such election must be filed before final action is taken. Upon the hearing of the application by the court, if a majority of the qualified voters have voted in favor of incorporation, and if the formalities of the law have been complied with, the circuit court may enter an order declaring the territory mentioned in the application, incorporated under a specified name, and entitled to exercise the corporate powers authorized by the general char-

* Code of W. Va,, Ch. XLVII.

ter. The territory incorporated must contain at least one-quarter of one square mile, and a resident population of not less than one hundred persons.

All charters for cities and towns with a population greater than 2,000 are granted by special act of the Legislature. In some states general charters are provided for cities and towns of all classes, so that every one must be governed by some one of a limited number of charters, usually three or four. In this way the matter of incorporation becomes a mere formality in the courts, and the Legislature is relieved of the useless labor of considering special charters. Sometimes, however, an act of the Legislature is required to change a city or town from one class to another, but it rarely enacts special charters except for cities of the highest class.

4. **Municipalities are Public Corporations.**—In order to obtain an adequate idea of government by a corporation it may be well to consider a few short definitions concerning corporations. A corporation is recognized by the law as an artificial person created by the law, with power to act in a certain capacity, or to transact business of a certain nature like a natural person. It may consist of one natural person, in which case it is a corporation sole. It may consist of a number of natural persons, in which case it is a corporation aggregate. It may be created in some states (but not in West Virginia) for religious purposes, in which case it is an ecclesiastical corporation. It may be created for secular purposes, in which case it is a lay corporation. In any sort of corporation the identity of the corporation is never changed, no matter how often the individual members composing it may change. Hence we say a corporation has succession: and if the charter is not limited to a fixed term of years, it has perpetual succession; it may never expire, though any corporation may cease to exist by forfeiture. Of lay corporations there are two recognized classes, namely, private corporations, and public corporations.

(1) **Private Corporations.**—A private corporation is one that is created for any trade or business except that of government. With this class we have nothing to do.

(2) **Public Corporations.**—A public corporation is one that is created by the State for the purposes of government, such as counties, cities, and towns. It is invested with subordinate legislative powers, to be exercised for local purposes connected with the public good; and such powers are subject to the control of the legislature of the State.* In addition to having succession a public corporation may, by its corporate name, sue and be sued, contract and be contracted with; it may sign papers by its officers with the corporate name and authenticate its signature with its common seal, much as an individual signs a deed and affixes his seal. It may purchase, receive, and hold property of any kind for the purposes of the corporation; it may make by-laws or ordinances for the government and direction of the public affairs with which it is entrusted; and may make any orders and do any acts necessary to carry out the purposes of its incorporation, provided they are not contrary to the Constitution and the laws of the State.

5. **Usual Charter Powers.**—A charter is an act of a Legislature incorporating a municipality, board, institution, company, or the like, and specifying the purposes and privileges thereof. It gives name to the city or town, fixes its boundaries, and generally specifies the powers and capacities with which it is intended to endow the corporation, though some are deemed to be necessarily and inseparably incident to a corporation by tacit operation. Whether expressed or not the power must exist with the sanction of law; and when it does exist the corporation, through its proper body of officers, may carry it into effect by making by-laws, ordinances, rules, and regulations according to the necessities of the case, provided they are reasonable and are not in conflict with the Constitution and

* Kent's Comm. ii, 275.

laws of the State. Hence every well-ordered city and town has its own code of ordinances passed by its council. Not all cities and towns have the same charter powers. In order to ascertain the exact powers conferred on any municipality reference must be made to its charter. It is impossible to note here the points of difference in a multitude of special charters. But among the powers usually granted are the preservation of order; all matters relating to streets and ways; the regulation of the construction of buildings; the protection of property from fire; the maintenance and control of the supply of water and light; all questions of drainage; the prevention of nuisances; the prevention of injury or annoyance to the public from anything dangerous, offensive, or unwholesome; the regulation of the liquor traffic; the preservation of the public health; the assessment of property; the granting of licenses; the raising of revenue; the appointment of certain officers and prescribing their powers and duties; and the regulation of the weighing of articles of commerce.

6. **Classification of Municipalities.**—There is no general classification of cities and towns in West Virginia further than has already been noted, namely, that those with a population under 2,000 fall into one class. This is unfortunate, because the time of every session of the Legislature is largely consumed in the consideration of special charters containing much matter that might properly be left for regulation by ordinance. This is an unnecessary waste of time. If municipalities were grouped into three or four classes, as is the case in some States, and if a charter were provided for all municipalities falling within each class, there would be little need of the Legislature consuming its time in consideration of special charters. There are but two classes of municipalities in West Virginia; namely, cities and towns. The law indeed speaks of "cities, towns, and *villages*," but no place is ever incorporated under the name of a *village*. In popular usage the word *village*, with us, signifies a small group of houses not in an

incorporated place. Formerly in Virginia the smaller places were frequently incorporated under the name of *boroughs*. In England the term *village* or *hamlet* signifies a small group of houses; *borough* or *town*, a somewhat large and closely built settlement; *city*, a town in which a cathedral is situated and in which a bishop resides. In the United States the term *city* is used in a very loose sense, and generally means a large town. In West Virginia there is no legal distinction between a city and a town.

7. **The Government of Municipalities.**—Every scheme of municipal government provides with more or less distinctness for the exercise of the three great functions of government—the legislative, the executive, and the judicial; but these departments are not always kept separate and distinct, as is the case in the state and national government. The mayor exercises some of the functions belonging to all three of the departments. It often happens that a city has a more complex government than a state in which it is situated. It has to do with a vast multitude of details with which the state is not concerned. City government has become one of the great perplexing problems in America; and with the rapid growth of our cities it becomes daily more difficult. It was formerly the habit to look upon the city as a small republic; but the present tendency seems to be to regard it rather as a huge corporation, and to manage its affair much in the same way that the affairs of a great trading corporation are managed.

(1) **Elections.**—It was formerly thought that the sacred right of election of all officers with short terms would insure good government. But with too many elective officers responsibility is divided, and it is often difficult for even the honest and intelligent voter to know where to fix it. Brooklyn has tried with much success an interesting experiment of electing only three officers, a mayor, comptroller, and auditor, and a one-chambered council of nineteen. All heads of departments are appointed at the absolute discretion of the

mayor, and each head of a department in turn appoints his subordinates. In a few cases where discretionary powers are called for, the work is entrusted to boards. Mr. Seth Low, former mayor of Brooklyn, says the scheme is arranged, "so that the principle of defined responsibility permeates the city government from top to bottom." The people have learned to be less afraid of the "autocratic mayor" than of the "ring" or the "political machine." In West Virginia partisan politics has not as a rule entered largely into municipal government but this is doubtless owing in a measure to the fact that there are no very large cities, and consequently there are few important offices to fall as a prey to the spoilsmen.

(2) **Legislative Department: The Council.**—The City of Wheeling is the only one in the State having a two-chambered council.

The legislative authority of municipal corporations under the general charter, is usually vested in a mayor, recorder, and five councilmen, who, together, form a common council. When the municipality is divided into wards, a council may determine the number of wards and the number of councilmen to be elected from each ward. Under the special charters the number of councilmen varies from one to four in each ward. In some instances the number of wards and of councilmen is rigidly fixed in the charter; in other instances one or both may be determined by the council. Concerning special charters few general statements can be made to which there are not individual exceptions. No two are exactly alike. In some cases all members of the common council are elected annually; in others some are elected for a longer period, and the terms are so arranged that only a part of the council retires or is reelected annually. The mayor, recorder and councilmen must be residents of their municipality, freeholders therein, and entitled to vote for members of the common council. The mayor is the presiding officer, the recorder is keeper of records and accounts, and in most cases may act in

place of the mayor in his sickness or absence. The council is required to keep an accurate record of all its acts, fully indexed, and open to the inspection of any tax payer. The council can no more pass any official act outside of a lawful meeting than members of the Legislature can pass state laws when that body is not in session. No matter if every member of the common council should agree to the act, the agreement to be valid in law must be in a lawful meeting of the council and must be entered in the record. A failure to observe this simple fact often gets a council into difficulties.

(3) **Executive Department: Officers.**—Under the common charter the council appoints a sergeant, an assessor, and a superintendent of streets, who hold office during the pleasure of the council and perform such duties as it may require. Under the special charters there is great diversity in the number and to some extent in the duties of officers. In them we find a list of such officers as sergeant or marshal, chief of police, city clerk, collector of taxes, treasurer, assessor, overseer of the poor, street commissioner, health officer, city physician, solicitor, city attorney, weighmaster, city engineer, wharfmaster, inspector of buildings, light, and water, and sundry boards. But no rule prevails as to whether the minor officers shall be elected or appointed. This depends on the provisions of the particular charter of each town or city.

The Mayor is the chief executive officer of the municipality. It is his duty to take care that the laws and ordinances of the town, and the orders of the council are faithfully executed. He is in control of the police, appoints special police officers whenever he deems it necessary, sees that the peace is preserved and property protected, and recommends to the council such measures as he may deem needful.

The Recorder keeps the journal of the proceedings of the council and has charge of the records. In the absence

or inability of the mayor to act he succeeds to all his powers.

The Assessor performs the same duty for the town that the county assessor performs for the State and county, and for that purpose has all the powers of a county assessor, except that in cities of less than 10,000 inhabitants, his valuations must be the same as those fixed by the county assessor for State purposes.

The Sergeant, unless otherwise provided by special charter, is collector of taxes, and by virtue of his office, treasurer, and has all the rights, powers, and privileges of a constable, within the corporate limits; but he may execute orders of arrest and serve summonses anywhere in his county.

The Street Commissoiner, *Chief of Police*, *City Clerk*, *Collector*, *Treasurer*, *Overseer of Poor*, *Health Officer*, *Solicitor*, and all other officers that may be created, perform such duties as are prescribed by law or required by the council.

The compensation of officers is usually fixed by the council, but the special charters sometimes have a maximum and minimum amount specified.

(4) **Judicial Department**—The judicial power is vested by the general charter in the mayor, recorder, and justices of the peace. The special charters generally follow this precedent; however, in some cases a special police court is organized. As a rule the mayor is the chief judicial officer. Justices of the peace within the municipality have the same powers as the mayor to punish offenses against the ordinances of the city or town, unless the special charter provides to the contrary. The mayor has all the powers of a justice of the peace within his limited jurisdiction. He may try both civil and criminal cases arising within the municipality, but as a matter of fact the mayors rarely take notice of any offenses except those arising out of violations of the ordinances. The ministerial officer of the mayor is the sergeant, who in fact and in effect is a constable within the municipality. Indeed he was formerly called in Virginia a "town constable." He

preserves the peace, makes arrests, serves process, and executes the orders of the mayor's court. Appeals may be taken from the decisions of the mayor to the circuit court of the county in the same way that appeals may be taken from the judgment of a justice.

CHAPTER XXX.

QUALIFICATIONS OF THE RIGHT OF SUFFRAGE.

1. **Ethnic Qualifications.**—(1) **Under the Colony (1606-1776).**—No statute of Virginia restricting the right to vote, on account of race, appears until 1762, when it was enacted that no negro, mulatto, or Indian, although such person was a freeholder, had a right to vote at any election of Burgesses, or was capable of being elected. But it is not probable that the right was ever extensively exercised by persons other than those of the white race. Instances no doubt occurred, which may explain the motive for the enactment of the law.

(2)] **Under the State of Virginia (1776-1863).**—Under the Constitution of 1776 the right of suffrage was to remain "as exercised at the present." In 1830 the language was changed but not the substance of the law. Every white male citizen of the Commonwealth, if qualified in other respects, and no other persons, had the right to vote for members of the General Assembly. No other ethnic qualifications prevailed in Virginia until after the Civil War, when the Fifteenth amendment to the Constitution swept away all restrictions on account of race or color.

(3) **Under the State of West Virginia (1863-1900).**—The Constitution of West Virginia (1863) limited the right of suffrage to the white male citizens of the State. The convention which framed the Constitution of 1872, under the coercion of the Fifteenth Amendment to the Constitution of the United States, struck out the word "white," so that the male citizens of the State were no longer denied the right to vote on account of race or color.

2. **Political and Property Qualifications.**—(1) **Under the Colony (1606-1776).**—The "Ordinance and Constitution" of the London Council, granting to the Virginians a General Assembly, provided that the Burgesses should be elected "freely by the inhabitants" of their respective towns, hundreds, and plantations. But even before this the settlers had a voice in the local affairs of their communities. No effort was made to change this "ancient usage" until the time of the Commonwealth in 1655, when it was enacted by the Burgesses that none but "housekeepers, whether freeholders, leaseholders, or otherwise tenants," should be capable to elect Burgesses. This Act was repealed in 1656, and all "freemen" were allowed to vote, for the reason that it was "something hard and unagreeable to reason that any person shall pay equal taxes and yet have no vote in elections." Under the Restoration (1670) this act was swept away for the reason that the "usual way of choosing burgesses by the vote of all persons, who having served their time are freemen of this country," produced "tumults at the election." In its place an act was passed which followed the English fashion and granted "a voyce in such election only to such as by their estates, real or personal, have interest enough to tye them to the endeavour of the publique good." During Bacon's rebellion, when his followers seized control of the Assembly it was once more declared that all freemen should vote. Within the following year "Bacon's laws" were all repealed, and the freehold restriction remained in force in Virginia until a comparatively recent time. These restrictions in the beginning were aimed, of course, at the emancipated white slaves, who, in the days of Sir William Berkeley (1671), outnumbered the blacks three to one.

(2) **Under the State of Virginia (1776–1863).**—The "indentured white servants," who were liberated at the end of their terms of servitude, had no place in the society of Virginia. They undoubtedly recruited the idle and lawless class,

Whatever justification may be found in the conditions of the time for excluding them from the suffrage, the reasons therefor had ceased to exist, when, during the first half of the nineteenth century, the people west of the mountains, who were neither white slaves nor the descendants of white slaves and had scarcely known the institution of indentured white servitude, pleaded in vain for a freeman's right to vote. They were sometimes poor; but they were free; had always been free. And when in 1850 the freeman's right was recognized, and a provision guaranteeing the right inserted in the Constitution, it was neutralized by another provision for an apportionment of the members of the General Assembly upon a property basis. The scheme is intricate; but it left the balance of power in the hands of the East. It was made the duty of the General Assembly in 1865, and in every tenth year thereafter, to agree upon a principle of representation, and to apportion representation in accordance therewith; but in case no principle were agreed upon, at any stated period, each house was to propose separately a scheme of representation for both House and Senate, and by certificate inform the Governor of each separate scheme proposed. It was made the duty of the Governor to make known by proclamation each of the propositions, and to call an election in order that the voters might choose one of them. In case the Assembly in 1865, or in any tenth year thereafter, should fail (a) to agree upon a principle of representation, and (b) to certify separate plans to the Governor, the Governor was required, immediately after the adjournment of the Assembly, to call an election of the voters to declare by their votes their preferences for one of four plans of apportionment:

(1) **Suffrage Basis.**—Upon the "suffrage basis," that is according to the number of voters in the several units of representation; namely, counties, cities, towns, and senatorial districts of the Commonwealth.

(2) **Mixed Basis.**—Upon the "mixed basis," that is accord-

ing to the number of white inhabitants contained, and the amount of taxes paid, less taxes on licenses and law processes, and capitation taxes paid on free negroes, in the units of representation in a fixed ratio.

(3) **Property-Suffrage Basis.**—Upon a complex plan which may be called the "property-suffrage basis," that is, (a) apportionment for the Senate on the basis of taxation, and (b) for the House on the suffrage basis.

(4) **Compound Mixed Basis and Suffrage Basis.**—Upon a compound of the "mixed basis," for the Senate and the "suffrage basis" for the House.

Each voter was to vote for one of the four schemes. If any one should have a majority of all the votes cast, it was to be adopted. If no one had a majority, the Governor was to call another election to decide between the two plans having the highest number of votes. The General Assembly at the session next after the taking of the vote, and in every tenth year thereafter, was to reapportion representation in accordance with the principle adopted. This dilemma, the product of political sleight of hand, confronted the people of western Virginia when the breaking out of the Civil War gave them an opportunity to establish their political integrity and independence.

3. **Under the State of West Virginia.**—(1) **Qualifications.**—West Virginia was admitted into the Union with free white manhood suffrage.

(2) **Disfranchisement.**—Partisan feeling is always intense along a border. West Virginia had many men engaged on both sides during the great Civil War. The Unionists, being in control of the state government could not make up their minds to extend the ballot to those who had aided in or sympathized with the rebellion. Accordingly an amendment was added to the Constitution (1866), which disfranchised any one who had given voluntary aid or assistance to the rebellion,

unless he had volunteered into the military or naval service of the United States, and had been or should be honorably discharged therefrom. A large class of citizens was affected by this amendment.

(3) Registration.—Registration was resorted to as a means of enforcing disfranchisement: the Constitutution authorized it; the Legislature enacted it; and laws were passed to prevent intimidation, disorder, or violence at the polls. The Governor appointed a county board of registration, consisting of three persons. The county board of each county appointed "one loyal and upright person" for each township or ward, styled the registrar. The registrars and boards met at fixed times and places provided for by law. Test oaths were prescribed. None but duly registered voters could vote.

(4) Results.—In the effort to enforce registration much disorder prevailed; riots and breaches of the peace were common; pugilistic encounters were frequent; and in some instances the aid of Federal troops was invoked by the Executive under the plea of securing the State against domestic violence. The disfranchised element of a people is always a source of unrest and sometimes of disturbance. To the Anglo-Saxon mind there is something unjust in disfranchisement. West Virginians themselves had chafed for many decades under a property qualification of Virginia, which had disfranchised large numbers of honest and industrious but poor citizens. How long would they continue to lay a burden upon their erring fellow-citizens?

(5) Reenfranchisement.—The Flick amendment to the Constitution of the State adopted on April 27, 1871, removed the disabilities imposed in 1866 on account of giving aid or assistance to the rebellion. This change, says Governor John J. Jacob, in his message (1872), was "followed by the happiest consequences. All citizens have learned to prize more highly and to guard more tenderly, the elective franchise." So that at the present time the bitterness of the past is buried

out of sight, and heartburnings have given way to fraternal feelings. The issues of the war are issues of the past.

(6) **Registration Forbidden.**—Registration being the instrument by which disfranchisement was accomplished, an intense prejudice was generated in the minds of the newly enfranchised voters against all registration laws. As a result the Convention of 1872 inserted in the new Constitution that "The Legislature shall never authorize or establish any court or board of registration." And as if this were not enough, in another place it is provided that no citizen shall ever be denied the right to vote, because his name is not registered. The unwisdom of these prohibitions was felt when it became necessary to put into operation an adaptation of the Australian ballot system.

4. **Moral Qualifications.**—New England alone of all the colonies imposed moral qualifications upon voters. The explanation lies in the fact that the original New England colonies were founded as church communites, and that church government and civil government for a time went hand in hand. Virginia alone of the entire group of southern colonies denied the right of suffrage to convicts and to persons transported from Great Britain for crime, during the term for which transported, although such person might be a freeholder. A modification took place in the Constitution of 1830; the denial was limited to persons convicted of an *infamous offense*. In 1850 the denial was extended to any person convicted of bribery at an election.

The words "infamous offense," as used by Virginia, were too general. They left unanswered the question, What is an infamous offense? West Virginia (1863) used specific terms and enacted that no person who is under conviction of treason, felony, or bribery in an election, shall be permitted to vote *while such disability continues.*

5. **Religious Qualifications.**—Religious qualifications for voting never prevailed in Virginia, except that Popish recus-

ants were disfranchised under the colony. The New England communities prescribed many religious qualifications and tests, generally church membership being required. This is owing to the fact that the New England colonies were founded as church communities for the establishment of churches and church government. In Virginia the plantations were founded for commercial reasons. No religious test ever existed in West Virginia.

6. **Qualification of Age.**—Rhode Island seems to have allowed housekeepers to vote at the age of eighteen, and Massachusetts fixed the minimum age at twenty-four. But the usual age required of electors during colonial times was twenty-one years, and such is the uniform requirement in all the states now.

7. **Qualification of Sex.**—During the colonial era women do not seem to have manifested any desire to vote. Virginia is the only colony that appears to have negatived their right in express words: but this is explained by the fact that Virginia had prescribed a freehold qualification in broad terms; and in order to negative an apparent right, it was enacted that "no woman, sole or covert," even though a freeholder, should have a voice in the election of burgesses.

8. **Qualification of Residence.**—(1) **In the Colony.**—In the Colonies the qualification of residence required of voters is vague. Only four defined the period of residence required, namely: Pennsylvania and Delaware two years; North Carolina at one time one year, afterwards reduced to six months; and South Carolina six months. In all the others it would seem that, if the voter was an actual resident *at the time of voting*, it was sufficient. But it was a common practice in New York for freeholders having estates in different counties to vote in each. In Virginia an elector was required to be a resident of the county in which he offered to vote.

(2) **In Virginia.**—In 1850 the Constitution of Virginia

prescribed a residence of two years in the State, and twelve months in the county, city, or town, as a qualification to vote.

(3) **In West Virginia.**—West Virginia (1863) prescribed a residence of one year in the State and thirty days in the county, as a qualification for voting. The new Constitution of 1872 left the requirement unchanged, except that sixty days' residence is required in the county.

(4) **In Municipalities.**—The period of residence required in incorporated cities and towns, in order to vote in the municipal elections, is usually six months, if otherwise qualified to vote in state elections; but in some charters the period is longer.

9. **Miscellaneous.**—There are a few minor qualifications that may be classified most conveniently under the head of miscellaneous. Persons of unsound mind and paupers were for the first time specifically excluded from the right of suffrage by law in 1830, although it is not probable that they often voted before this time. The same provision has been continued in every Constitution of Virginia and West Virginia since. In 1830 Virginia enacted by Constitution that the right of suffrage should not be exercised by a "non-commissioned officer, soldier, seaman, or marine, in the service of the United States." It would seem they were disfranchised even though residents of Virginia. The same language was repeated in the Constitution of 1850, but another clause was inserted that "no person in the military, naval, or marine service of the United States, shall be deemed a resident of the United States by reason of being stationed therein." This would allow resident officers to vote but no other.

West Virginia in her first Constitution (1863) made no limitation on the subject, and in 1872 merely wisely provided that no person in the military, naval, or marine service of the United States, shall be deemed a resident of the State by reason of being stationed therein." Disfranchisement in any

form has never been sustained by the judgment of the liberty-loving men of the mountains and valleys of West Virginia.

10. **Summary.**—Thus we see how the question of the suffrage has gone through many phrases from the first exercise of the right in Virginia in 1619, to the present time: (a) first; all the inhabitants or freemen voted (1619-1655); (b) then none but housekeepers voted (1655-1656); (c) then the freemen again (1656-1670); (d) then the freeholders only (1670-1676); then the freemen once more, (1676-1677); (f) then freeholders only, again (1677-1850); (g) then the freemen once more, but with a proviso for representation upon a property basis (1850-1863); and (h) finally, the complete realization of free manhood suffrage under the Constitution of West Virginia.

"Jefferson is often called the father of modern American democracy; in a certain sense the Shenandoah Valley and adjacent Appalachian regions may be called its cradle." But "in that rude frontier society," which clustered on the mountain tops and in the valleys between the Appalachian range and the Ohio River, "life assumed many new aspects, old customs were forgotton, old distinctions abolished, social equality acquired even more importance than unchecked individualism."

CHAPTER XXXI.

HOW ELECTIONS WERE CONDUCTED.

1. **Introductory.**—The Puritan colonies, the two Jerseys, Pennsylvania, Delaware and the Carolinas used the ballot from the beginning, which, although it differed materially in form in the several communities, nevertheless attained the chief end of secrecy. Virginia, always more or less under royal rule, naturally followed a system of elections similar to that in vogue in England. The ballot was not used; and it was not introduced into English Parliamentary elections until 1872. The only officers elected in Virginia in colonial times were members of the General Assembly. Indeed they were the only officers elected by the people of Virginia before 1850. All others were appointed in some manner, or elected by the General Assembly.

2. **Calling Elections.**—The commissions and instructions issued to the royal governors usually authorized the calling of assemblies by means of writs of election directed to the sheriffs. When burgesses were once elected in pursuance of these writs, they continued to hold office until the General Assembly was dissolved by the Governor. This he might not choose to do every year; but instead, might prorogue the assembly from time to time, and thus continue the same members for an indefinite term. Finally, in 1762, it being found "by long experience that frequent new assemblies tend greatly to the happiness and good government of the colony," it was enacted that writs of election should be issued "for calling, assembling, and holding a new General Assembly . . . . within three years at the farthest from and after the

determination of every General Assembly." Writs of election were signed by the Governor, under the seal of the Colony, and delivered to the Secretary, who in turn was to convey them to the sheriffs, within a limited time; and the sheriffs were required to hold the elections in a manner described hereafter.

But in our day general elections are held at times and places established by law, so that no call or notice of an election is ever necessary, except in case of a vacancy. The Governor fills vacancies in state offices until the next general election. Vacancies in minor offices are usually filled temporarily by the courts until the next general election at which the vacancy is filled for the unexpired term. The Governor issues a writ of election to fill a vacancy in the Legislature occurring during the recess of the Legislature. If the vacancy occurs in the Senate during the session the President of the Senate issues the writ; and if it occurs in the House during the session the Speaker issues the writ.

3. **Publication of the Writ.**—It is necessary that voters should have notice of the time and place of elections. The original custom in Virginia required the sheriff to go from house to house, within ten days after receiving his writ, and to give six days notice of the election, much after the manner in which he now goes from house to house to summon jurors and witnesses. But it is evident this plan did not prove satisfactory. In 1661 an act of assembly recites that "Whereas frequent complaints are made by the people that they have no notice of the time appointed for election of Burgesses and by that means are deprived of giving their voyces in the election of their owne representatives," it was therefore enacted, "that the sheriffes of the respective countyes shall upon the receipt of the writts cause coppies thereof with the day appointed for the election indorsed to be sent to the minister or reader of every parish in their county, who is to read the same to the people two Sundays successively, both

in the Church and Chappelle of ease to itt belonging (to the end that no person may pretend ignorance) and returne the same to the sheriffe with his attestation subscribed that he hath published the same according to this act." Fines ranging from 200 to 2,000 pounds of tobacco were imposed for neglects of duty under the act. Other laws were passed at different times concerning elections, but they did not materially alter the manner of publication of the writs.

In case of special election the sheriff was required to send a notice of the time and place to every freeholder in his county, and to hold the election as soon as possible after the receipt of the writ.

Under the states it has come to pass that both time and place of all regular elections are fixed by law, and every voter must take notice of the law; but in case of a special election to fill a vacancy publication of notice in newspapers is usually provided for by law.

4. **Time of Elections.**—In early times elections in Virginia were held on the regular monthly court day of some specified month. There is nothing to warrant the conclusion that elections were held within certain hours, as was the case in some of the Puritan colonies. It seems to have rested in the discretion of the sheriff to keep the poll open from day to day until satisfied that all who desired to vote had done so. This custom was confirmed by act of assembly in 1762, so that the sheriff was required, in case the poll was not completed "before sun setting on the day of election," to adjourn the poll until the next day; and in some instances—such as rain or flood—from day to day for as much as four days. Proclamation of adjournment was made from the door of the court house.

In 1798 "the third Monday in March of every year" was fixed as a uniform day of elections throughout the Commonwealth. This is the first instance in Virginia in which a uniform day of elections was established. In 1830-31 it was provided that "the poll shall not be opened .. sooner than

sunrise, and shall be closed at sunset." The existing law in West Virginia is, "the polls shall be opened .. .. *as soon as practicable after sunrise*, but not before, and shall be closed at sunset."

Until 1883 West Virginia held the State election in October (under the Constitution of 1863 on the fourth Thursday, and under the Constitution of 1872 on the second Tuesday), and the Federal elections in November. Now, however, by reason of an amendment to the State Constitution, both State and Federal elections are held on the "Tuesday next after the first Monday in November" in every even year.

5. **Officers of Election.**—As in England so in Virginia, the sheriff, being the executive officer of the county, served the writs, presided at elections, and certified the returns. In case of his sickness, death, or inability, one of his deputies, the mayor of any city or borough, or in case of his inability the recorder, and the magistrates, in order of appointment beginning with the senior, could conduct elections. At all elections at which no determination was had by view, the conductor of the election was required to "appoint so many writers" (clerks) as he should think fit, to take the poll. This continued to be the law until 1830, when commissioners were provided for to hold the elections in place of the sheriffs. Nevertheless the sheriff, or one of his deputies, was still required to open the polls at every voting place, to proclaim the votes admitted by the commissioners, to see the proper record made, and to preserve the peace and order. Commissioners to superintend the elections for electors of President and Vice President at the courthouse of any county or corporation, were appointed by the Governor. The commissioners in turn appointed three commissioners for each separate polling place in the county or corporation. In all other cases the commissioners were appointed by the county or corporation courts. Clerks still called "writers" were appointed by the commissioners. Thus we see that after 1830 the officers of

election became substantially the same as they are in West Virginia today, except as to method of appointment: the county courts now appoint all commissioners of election. The sheriffs and the commissioners performed the duties now required of boards of canvassers. Returns were made to the Secretary of the Colony or the Secretary of State much after the present method.

6. **Nomination of Candidates.**—It is doubtful whether any system of nominating candidates for public office prevailed in colonial Virginia. There were certainly no organized political parties to make nominations. Burgesses only were elected. It was the custom in England to have a hustings platform, on which the candidates sat, and from which, after having been nominated by one elector and seconded by another, each addressed the voters. In place of the hustings platform these pioneer politicians sometimes used the stumps of the recently cleared forest, and later the platform or steps at the door of the courthouse. Hence we say, the politician *stumps* the state. Since organized political parties came into existence, nominations have been made by them, either by primary elections or by conventions. Not until 1891, upon the adoption of the so-called Australian ballot system, did West Virginia enact laws governing nominations to public office.

7. **Method of Voting.**—(1) **In England.**—In the absence of written laws, custom was the only authority governing elections. "It would be a waste of ingenuity," says Bishop Stubbs, "to speculate on the different courses that a sheriff, unguided by custom may have adopted. The election usually took place at the next county court following the delivery of the writ. Proclamation was made; and under the presidency of the sheriff the voters, thereupon, proceeded "freely and indifferently" to the election. The sheriff could do about as he pleased; and he often abused his great powers. The electors expressed their choice by a show of hands, or by a *viva voce* vote. The sheriff decided who had a majority,

much as a chairman of a debating society decides between an aye and a nay vote, but at first without right of appeal. This was called "taking a view." Toward the latter part of the seventeenth century any candidate was given the right to demand a poll. A poll list was reduced to writing by clerks selected by the sheriff. It contained the name of every freeholder voting, the location of his plantation, and the name of the candidate for whom he voted.

(2) **In the Puritan Colonies.**—The Puritan colonies developed a method of voting which they called the proxy system. It was the forerunner of the ballot. In Massachusetts, at first, a corn and bean ballot was used; and in West Jersey a ball ballot and boxes. Secrecy was the end desired.

(3) **In Virginia.**—The ballot found little favor in any of the southern colonies, except South Carolina, and, perhaps, Virginia. Virginia early gave promise of developing a written form of ballot, for a law directed the sheriffs "not to compel any man to go off the plantation where he lives to choose Burgesses." So the Sheriff went from plantation to plantation and collected the votes of the inhabitants. It is certain that the electors voted by a written paper which the sheriffs collected, or by a written proxy; because the preamble of a law of 1646 recites, that divers inconveniences are likely to ensue . . . . by subscribing of hands," and enacts, "that noe election shall be made . . . . but by a plurality of voices, and that no handwriting shall be admitted." This tendency toward a written ballot was finally suppressed by a law in the time of William III, to the effect that if the election could not be "determined upon the view by the consent of the freeholders then present," any candidate or freeholder could demand a poll, which the sheriff was required to take after the manner of an English poll. Laws were passed from time to time, prescribing details for conducting elections, but the essential features of the system of an open *viva voce* vote remained unchanged until after the formation of West Vir-

ginia. Indeed the Constitution of 1830 said, "In all elections in this commonwealth .. .. the votes shall be given openly, or *viva voce*, and not by ballot;" and the Constitution of 1850 used the identical language, but added these words: "*but dumb persons entitled to suffrage may vote by ballot.*"

(4) **In West Virginia.**—The first Constitution of West Virginia contained the guaranty, that "In all elections by the people the mode of voting shall be by ballot;" and the Constitution of 1872 reaffirmed this provision, but added the following: "but the voter shall be left free to vote by either open, sealed, or secret ballot, as he may elect."

8. **Contested Elections.**—As a means of guarding against fraud, it was, at an early date, the rule in Virginia for the sheriff to give, to any candidate demanding it, a copy of the poll. In later times the law required the poll to be returned to the clerk of the county court and to be recorded among its records. A contest for the assembly was raised by petition of the defeated candidate, after the English fashion. Upon the hearing the poll was frequently produced before the house for examination. After 1830 notice of contest was required to be served upon the opposite party, together with specifications of votes contested similar to the requirement which now exists. Each house was then and is now the judge of the election, qualification, and return of its own members without appeal.

9. **Counting the Vote.**—It would require too much space to give even an outline of the many complex requirements in Virginia for counting the votes and certifying the returns. Only a few of the most prominent features may be noticed.

Before 1830 the sheriff, as conductor of the election, counted the votes and issued certificates of election. In districts composed of two or more counties, the sheriffs of all the counties met at a central courthouse, which was designated by law, for the purpose of ascertaining who was elected and of issuing certificates of election.

After 1830 the commissioners who acted at the courthouse of the county, acted also as a board of canvassers to ascertain and certify the results in the whole county, much as the county court does at present. In districts composed of two or more counties, the commissioners, who served at each courthouse precinct, met at some central courthouse in the district, as the sheriffs had formerly done, and ascertained results and certified returns. We shall see in another place how West Virginia has simplified this somewhat antiquated and complex system.

CHAPTER XXXII.

THE AUSTRALIAN BALLOT SYSTEM.

1. **Origin and History.**—In 1857 Francis S. Dutton, a member of the Legislature of South Australia, proposed a plan of voting which became a law and has become familiar under the name of the Australian Ballot System. The excellence of its essential principles was recognized, and it has been adopted in a modified form in Europe, Canada, and the United States. With us Massachusetts led in the reform in 1888, followed the next year by Indiana, Montana, Rhode Island, Wisconsin, Tennessee, Minnesota, Missouri, Michigan, and Connecticut.

2. **Essential Features.**—While many states have adopted the principles of the Australian ballot, perhaps no two have enacted the same details; but at least two essential features are present in all statutes of the states that have adopted the system:

(1) **Polling Places.**—There is an arrangement of polling places upon some uniform plan intended to secure the secrecy of the ballot, and remove the voter beyond the reach of solicitation, bargaining, trading, intimidation, coercion, and every form of undue and improper influence.

(2) **Official Ballots.**—An official ballot is prepared and distributed under the authority of the State, and is printed at public expense, on which appear the names of all candidates who have been nominated by any party or organization recognized by law, together with the names of the parties making the nominations, and the name of the office for which nominated. These are two prevailing forms of the ballot.

The *blanket ballot* is the form most in use. In it the candidates may be grouped either by parties or by offices. The Australian ballot proper groups the names of all candidates for the same office together in one column. The form of the blanket ballot known as the Belgian ballot, is the one in general use in the United States. In it the names of candidates are arranged in parallel columns on the same sheet of paper, each column representing the candidates of a particular party, with the name of the party making the nominations printed at the top; and in some states a picture or device of some kind is also printed as the emblem of a particular party, so that the illiterate voter may recognize the column in which the names of the candidates of that party are printed. The Australian ballot encourages voting upon the individual merits of the candidates; the Belgian ballot encourages the maintenance of party organization, and makes it easier to vote the "straight ticket." In the United States we have government by political organization to an extent that prevails nowhere else; hence, the Belgian ballot has proven the more popular.

The *individual ballot* is used in New Jersey. It is official in that it is printed at public expense; but an unofficial ballot is practically in use, since the voter is allowed to take into the voting booth a paster ballot, printed and furnished at private expense, which he may past over the official ballot.

3. **Some Forms in Use.**—In *Massachusetts* the names of all candidates for the same office are printed in one column, under the name of the office, but the party name also appears opposite the name of each candidate. Greater prominence is therefore given to the individual candidate than to the party of which he is the nominee. The voter cannot vote a straight ticket by making a single mark: he must make a mark opposite the name of each person voted for.

In the *Louisville* ballot party names do not appear. Promi-

nence is given to the individual candidate to the exclusion of party. It more closely resembles the Australian ballot than anything else in the United States.

In the *Indiana* ballot, which is the prevailing type in this country, the name of the party appears at the head of each ticket as well as at the side of each name. Candidates are grouped according to party in parallel columns. Party organization is made prominent; but, while individual voting is provided for, the obvious purpose is to secure a strict party vote.

4. **The West Virginia Law.**—The State adopted a modification of the Australian system in 1891. We shall now indicate an outline of its most important features.

(1) **Election Precincts.**—Each magisterial district is divided into convenient precincts with fixed boundaries, and with one voting place in each precinct.

(2) **Commissioners and Clerks.**—Three qualified voters are appointed by the county court as commissioners of election in each precinct, selected from the two political parties casting the highest number of votes in their magisterial district. The county executive committee of each party may nominate one commissioner. Not more than two commissioners may belong to the same political party. The commissioners appoint a poll clerk from each of the dominant parties.

(3) **Pollbooks and Ballotboxes.**—These are provided for each place of voting, at public expense, by the clerk of the county court of each county, according to forms and specifications prescribed by law.

(4) **The Ballot.**—The Belgian blanket ballot is used. All nominations are certified to a board of ballot commissioners, by whom the official ballots are prepared, printed, and distributed among the voting precints in proportion to the number of votes cast at the last general election. Every ballot issued must be accounted for.

(5) **Votingbooths.**—Each precinct has a room or building in which to hold elections. It is supplied with not less than two nor more than five booths or compartments, with a table or shelf and materials for preparing ballots, so that the voter may be secure from the observation of others. A guard rail is arranged so that no unauthorized person can approach within five feet of the ballot-box while the ballot is being taken.

(6) **Voting.**—Only one voter for each booth may enter the polling place at the same time. Each voter on entering the room announces his name and place of residence, and receives from the poll clerk one ballot. He then enters alone one of the compartments and prepares his ballot. At the request of the voter, if he can not read or write, or if he has some physical disability, the poll clerks together may assist in making out his ballot. He then folds the ballot, announces his name, hands his ballot to one of the commissioners, and retires immediately from the room and beyond the limit of sixty feet. No voter is permitted to occupy a booth longer than five minutes, or to hold conversation or communication with any person other than the poll clerks or commissioners, while in the election room.

(7) **Ascertaining the Results.**—When the polls are closed the commissioners and clerks must, without adjourning, count the votes, ascertain the results, and certify, deliver, and post the returns, in the manner prescribed by law.

(8)* **Board of Canvassers** —The commissioners of the county court convene as a board of canvassers on the fifth day after the election, excluding Sunday, and make up and enter of record, in a book called the "Election Record," the results of the election in their county. They make up and transmit certificates of election as follows:

For *county and district officers* one copy to each person voted for;

For *State Senators and Delegates* one copy to each person voted for and one to the Secretary of State.

For the *executive officers of the State* one copy as to each office to the Secretary of State to be by him delivered to the Speaker of the House of Delegates to be opened and published in Joint Assembly.

For *judges, representatives in Congress, and presidential electors* one copy in each case to the Governor, who ascertains the name of the party elected, makes proclamation thereof, and issues his commission accordingly.

(9) **Enforcement of Election Laws.**—The offences relating to elections are numerous, and are punished either as folonies or misdemeanors, depending on the gravity of the offense. Felonies are punished by confinement in the penitentiary; misdemeanors, by fine, or fine and imprisonment in the county jail. Among the offences may be enumerated neglect or misconduct of election officers; voting twice; procuring bad votes to be admitted or good ones rejected; tampering, &c., with the ballot-box; destroying, injuring, altering, &c., poll-books, ballots, etc.; using force or intimidations at elections; bribery, betting on elections; treating voters; selling intoxicating liquors on election days; drunkenness at or near the place of election; requesting a voter to exhibit his ticket; inspecting a ticket, or giving a ticket, within sixty feet of the polls.

CHAPTER XXXIII.

THE STATE: GENERAL DEFINITIONS AND PRINCIPLES.

1. **How the State was Evolved.**—The first form of the State, known with certainty to man, was the patriarchal or family state. Only those related by the tie of blood could be entitled to its privileges and protection. Later fictitious kinship, a sort of naturalization, conferred the rights and privileges. The oldest living male ancestor was the patriarch and ruler: a sort of king and priest combined. The Abraham of the Bible is a ruler of a State of this kind. From such beginnings through long courses of development the modern State, as we know it in Europe and America, has gradually come forth. In the beginning the State was necessarily a very small affair; but today a great Federal State, the United States of America, is able to bind together by representative government a number of States in one Union forming a great State, which, by way of distinction, we call the Nation; and in Europe there is that other great Federal State called the German Empire, composed of kingdoms, principalities, and city republics, including Prussia and Bavaria, Baden and Brunswick, Hamburg and Bremen, among others. In all Federal States it has been found perfectly practicable for the Federal State and the States composing it to exercise their separate powers and functions without clash or conflict.

2. **How the Colonies Became States.**—We have seen in another chapter that Virginia had its origin in the charter of a mercantile company in London. It had grown from a mere trading post into one of the thirteen colonies into which the English settlements, within the present limits of the United

States, were grouped at the outbreak of the American Revolution. For the purpose of carrying on their resistance to Great Britain these colonies chose delegates to a Continental Congress, which assumed general powers of government and management of the war. The Continental Congress recommended to the colonies that they organize themselves into States with a scheme of carrying on state government. Most of the colonies acted promptly upon this suggestion and adopted constitutions, or so modified their existing charters as to answer the purposes of constitutions, and proceeded to organize and put into operation the machinery of state government. Connecticut adopted a declaration of rights and continued her government, under the charter granted by Charles II, until 1818. Rhode Island made no change, but used her charter of 1663 as a constitution as late as 1842 when a new constitution was adopted. Virginia's charter having been forfeited by the crown (1624), a convention was called (1776) which framed a bill of rights, and a constitution that was put into operation without referring it to a vote of the people. Thus one by one the colonies became States and administered their own affairs of local government, while those larger and general affairs common to all were assumed by the Continental Congress, particularly those relating to the conduct of the war, the making of peace, and foreign affairs in general.

4. **State: Meaning of the Word.**—In a federal government like ours the word "state" is used with two distinct political meanings. Its normal use signifies a government recognized by the people as supreme. It is readily seen that this definition does not fit our case. Mr. Richard T. Ely puts it thus: "The American Union constitutes the real American state. Our commonwealths have only a limited sovereignty, and are imperfect states in the real sense of the word state." Under the Federal Union of the United States each State has its own legislature, executive officers, and courts; and manages

its own affairs without interference from the Federal Government; while the United States exercises those functions of government only that are delegated by the Constitution, as foreign relations, commerce, currency, etc. It has also its own legislature, executive officers, and courts.

4. **Nation: Meaning of the Word.**—The word "nation" is a synonymn for the word "state." But with us it is often used to distinguish the United States as a whole from the individual States composing it. It is also used in the same sense as Union. In another sense it means any body of people of common origin, customs, and language, or a tribe or number of tribes combined, as the Jewish nation, the Iroquois nation.

5. **Purposes of Government.**—The combination of people in the society which we call the State, is an organism and must have an organ through which it acts. This organ is government: it is the oranization of power for carrying out the purposes for which the State exists. This is equally true whether the social organism be the savage tribe or the most highly civilized State. The chief aim of government as set forth in the Bill of Rights in the Constitution of the State is "the common benefit, protection, and security of the people." This of course includes among many other things, the maintenance of justice, the promotion of the general welfare, the preservation of rights, and the enforcement of duties. "A right is a well-founded claim of one man on another. Since the social character of men makes their relations mutual, every right or claim of one on another has a corresponding duty or obligation from the other, which must guide his action. . . . . As the State is made up of the citizens, the citizen who renders obedience to laws, has the right to expect protection from the State; and, on the other hand, the State has the duty of protecting him, and the right to insist on his obedience to the laws." There are two main classes of rights, first, those that are natural and inherent, and second, those that are civil, because conferred by the State. The inherent rights of which men in

a state of society can not by any compact divest their posterity, are (1) the enjoyment of life and liberty, (2) the means of acquiring and possessing property, and (3) the means of pursuing and obtaining happiness and safety.

(1) **The Rights of Life and Liberty.**—All citizens are entitled to the protection of their lives and liberty by the government, except the criminals, who may be executed or imprisoned as a means of enforcing the law, and insane persons, who may be restrained in prisons or asylums for the safety of other citizens and for the good of the State. The right of personal liberty contemplates the utmost freedom of action in the citizen, except so far as he may be restrained by the law of the land.

(2) **The Right to Acquire and Possess Property.**—Private property may be taken without the consent of the owner in three cases only: first to satisfy a judgment or decree of a court; second, in payment of taxes; and third, in exercise of the right of *eminent domain*, which is the sovereign right of the State to take private property for certain public uses, such as public roads, railroads, public buildings of all kinds, etc.; but in all such cases the property shall not be taken or damaged without just compensation to the owner. In many European countries it was at one time a common practice for the State to seize private property for the use of the State, and the owner might or might not receive compensation therefor, depending upon whether the sovereign power chose to pay for it or not.

(3) **The Right to the Pursuit of Happiness.**—Under this broad right may be included:

(a) The freedom of speech and of the press; but obscene books, papers, and pictures, and slander and libel, may be restrained and punished.

(b) Religious freedom is safely guarded in Virginia, so far as the law can accomplish this result. The Established Church which was the Church of England, was disestablished

in 1776. Before this time the people had been taxed by the parishes for the support of the church. No religious oath or test of any kind can be required. "No man shall be compelled to frequent or support any religious worship, place, or ministry, whatever; nor shall any man be enforced, restrained, molested, or burthened in his body or goods, or otherwise suffer, on account of his religious opinions or belief, but all men shall be free to profess, and by argument to maintain, their opinion in matters of religion; and the same shall in no wise affect, diminish, or enlarge their civil capacities."

6. **Kinds of Government.**—There are two main classes of government, namely, civil and military.

(1) **Civil Government.**—With us civil government is the government of the State as administered in time of peace in accordance with the provisions of law. Civil government may be further divided into three principal systems.

(a) **Monarchy.**—A monarchy is a government whose chief executive authority resides in one person, commonly called a king, queen, emperor, empress. There are many kinds of monarchy.

An absolute monarchy combines all the powers of government in the monarch with no limitation, except so far as he may choose to be influenced by the ancient usages and customs of his people. All power proceeds downward from the monarch, not upward from the people. But even in the most absolute monarchy there is a sort of unwritten constitution which the monarch regards as binding upon him. Russia is a type of an absolute monarchy, but even the Czar gives heed to the long established usages of his country, and there is a large measure of local government exercised by the people with imperial oversight. The Czar probably has the consent of his people to rule as fully as any other ruler. No government will long exist in this age of the world without the consent of a majority of the governed. While the Russian gov-

ernment would not suit us at all, nevertheless it seems to satisfy the Russians. It is in accordance with their customs and habits of thought.

A constitutional monarchy is one in which the chief magistrate is limited in his powers by a recognized body of laws, existing either from immemorial custom or made by a legislative body elected for the purpose, or by the people. England and Italy are examples of constitutional monarchies.

A hereditary monarchy is one in which the ruler succeeds to his powers by right of kinship. It may be either absolute or limited by a constitution.

An elective monarchy is one in which the sovereign is chosen for life by some select body of electors.

A patriarchy is a sort of monarchy in which the eldest living male ancester is ruler, usually under the title of patriarch. This type was common in ancient times, but is now rarely met with except in parts of Asia and Africa.

A theocracy is a kind of monarchy in which it is claimed that the ruler is under the direct guidance of God. The Jewish nation in the time of David and Solomon was a theocracy.

(b) **Aristocracy.**—This is a form of government in which a privileged few control the affairs of state without a monarchy, and exclusive of the common people. It is sometimes called an *oligarchy*. It is seriously doubted whether there is now a well-defined type of aristocracy or oligarchy in existence. Some eminent writers assert that monarchy and democracy have squeezed out aristocracy altogether. If it exists at all it is merely a survival in combination with either monarchy or democracy.

(c) **Democracy.**—A democracy is a political system in which the government is controlled by the people collectively. It is simply government by the people. In Lincoln's famous words it is "the government of the people by the people for

the people." There are two main types, which, however, are rarely found existing alone, but are more or less blended in all States.

A pure democracy is one in which the people legislate and choose executive and judicial officers directly as they did in some of the ancient Greek city-states, and as they still do in many towns in New England and the Northwest.

A democratic republic is one in which legislation is accomplished not directly by the people, but indirectly through elected representatives, as is the case in every State in the Union.

The efficiency of a republic depends upon the wisdom and virtue of its citizens. Education, virtue, and experience in the habits of self-government are essential to their welfare. But the habits and modes of thought of a people must, in the end, determine the particular form of Government best adapted to their characters and necessities. The United States and Switzerland are pointed out as the best types of republics; but there are vast differences in the details with which they carry out the same fundamental ideas. It is doubtful whether the Swiss method could be worked successfully in a single State of the Union. While France is a republic in name, it is in fact more monarchical than England; and Mexico, although called a republic, is essentially an empire.

7. **The Federal Government of the United States.**—The ancient democracies were necessarily small, because government by representatives was not then thought possible. The United States, for the first time in the history of the world, demonstrated that widely separated States can be united under one common government for the administration of those larger affairs that concern all the States, and at the same time leave each State practically distinct and independent in those departments of local government which immediately concern the life, liberty, property, and happiness of the States as communities. Confederacies had in a measure

suggested this result; but no confederacy is a State in the proper sense of the word. Confederacies are composed of sovereign States: they have no real sovereignty themselves. The members of a confederacy do not unite: they merely act in concert.

The United States constitutes a State. It is equipped with the complete machinery of government within its constitutional limits, and is recognized among nations as a State. The Union is permanent; no State can withdraw from it; neither can a State be destroyed. It is an "indestructible Union of indestructible States." It is in short a Federal State. "There exists in the Federal State," says Professor Woodrow Wilson, "no completely sovereign body, and the functions of sovereignty are parcelled out among authorities national and local." Perhaps the only real sovereign in the Federal State is the power which makes and unmakes the constitution, the supreme law of the land. The "people of the United States" make and unmake this supreme law, not by mere preponderance of popular vote in the whole United States, but by a vote taken by States, regardless of whether the majority which determines that vote by the State shall be one, or one hundred thousand or more. If the people of the United States are not sovereign, there can scarcely be a sovereign in in our system,

8. **Relation of the State to the Federal State.**—The States are "constituent members of the Union," and their separate and distinct powers are in no wise under the control of the Federal authorities. The counties, townships, and cities of a State are local divisions for the purposes of administration; but the States are not, necessarily, administrative divisions of the Union. France, although a republic, is not a Federal State like ours: it is divided into administrative divisions called departments. Germany on the other hand, while an empire, is, nevertheless, a Federal State whose kingdoms, grand duchies, duchies, principalities, and free cities sustain a relation to the empire similar to that sustained by the States to our

Union. The Emperor is not sovereign. The sovereignty resides "in the Union of German Federal princes and free cities." It sometimes gives us a better idea of our own government to compare it with another.

9. **Classification of the People of the State.**—The natural division of the people with us is into two main classes, citizens and residents.

(1) **Citizens.**—The word "citizen," in popular language, is subjected to some very loose and incorrect usage. In its highest political sense citizenship implies membership of a sovereign state, especially of a republic. "All persons born or naturalized in the United States," says the Constitution, "and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside." No one can be a citizen of a State without at the same time being a citizen of the United States. The two go together, and citizenship of the United States goes in advance; but the moment one becomes a citizen of the United States, in that instant he becomes a citizen of the State in which he resides. He may not have resided in any one State more than a few weeks at or before the time when his citizenship becomes perfected, and therefore may not have yet acquired the right to vote; but he becomes a citizen, nevertheless, of the State wherein he resides at the time the federal law makes his citizenship complete. Federal law alone admits to formal citizenship. The point of confusion arises from the fact that citizenship and the right to vote are sometimes confounded. All citizens have the right to vote in the State of their residence if they fulfill certain requirements as to age, sex, time of residence, etc.; but a voter is not necessarily a citizen. Each State grants the right of suffrage upon its own terms. The suffrage in all the States is given to the male citizens who are twenty-one years of age. In some of the States the right stops there; in others it goes further. Ten States extend the right to every male *inhabitant* who is twenty-one years of age, even though he may be of

foreign birth, and may never have so much as declared an intention to become a citizen of the United States. Is such a person a citizen? Certainly not. The terms resident, voter, and inhabitant must not be used as signifying the same as citizen.

(2) **Residents.**—We see therefore that a resident may be quite distinct from a citizen. A resident is simply one who has a fixed place of abode, which is called his residence. It does not necessarily imply intention to continue such residence. A man may be a resident of one country and a citizen of another. There are many citizens of the United States who are residents of some foreign country. There are many foreigners in the United States who have fixed residences here, who, however, are still citizens of the country from which they came.

10. **The Three Departments of Government.**—The powers and functions of government in the Federal Constitution as well as in every state constitution are set off into three coordinate departments, that is, departments of equal rank and authority. These departments are the legislative, or lawmaking department; the executive, or law enforcing department; and the judicial, or law interpreting department. This feature of distinct separation of powers does not prevail in any European government to the same extent that it is carried in America; nor did it prevail in America in colonial times. It is a modern feature first introduced by a Frenchman by the name of Montesquieu, who in 1748 published his book on government, called the *Spirit of Laws*. This book was extensively read by scholars all over the world, and left a deep impression, particularly in America. There is no doubt that it was the cause of the insertion in our constitutions of provisons for the separation of the three departments of government, so that each class of powers is carried out by a different set of men. The Constitution of West Virginia, therefore, provides, that "The legislative,

executive, and judicial departments shall be separate and distinct, so that neither shall exercise the powers properly belonging to either of the others; nor shall any person exercise the powers of more than one of them at the same time, except that justices of the peace shall be eligible to the Legislature." This broad declaration has to be somewhat liberally construed, for the right of the Governor to veto laws is a legislative act, and the right of the Senate to approve or reject the appointments of the Governor to office, together with some other limited exercises of power, constitute minor exceptions to the principle.

11. **The State Constitution.**—A constitution may be defined as the fundamental law of a civil State. It fixes the principles upon which the government is founded; establishes the bodies, departments, or persons to which the powers of government are confided; and regulates in a general way the manner in which those powers may be exercised. It may be written as in the United States; unwritten as in England. The Right Honorable James Bryce, an eminent Englishman, has written a book, which he calls "*The American Commonwealth*," in which he says: "The constitution of 1789 .. .. after all deductions .. .. ranks above every other written constitution for the intrinsic excellence of its scheme, its adaptation to the circumstances of the people, the simplicity, brevity, and precision of its language, its judicious mixture of definiteness in principle, with elasticity in detail." Each State has its own constitution framed in its essential principles upon the model of this great instrument, with which the state constitution must not conflict. State constitutions are often amended in some particular respect or changed wholly. The average life of state constitutions has been about thirty years. A new constitution is usually framed by a convention chosen for the purpose, and its work when completed is submitted to the people for ratification or rejection. Little Delaware is an exception; the

Legislature may amend the Constitution without a vote of the people. The Constitution of Virginia of 1776 was not submitted to the people. West Virginia has had two Constitutions, one adopted in 1863, the other in 1872. A number of amendments have been adopted from time to time.

12. **The Vast Functions of the State.**—Inasmuch as the Federal State is built up on the States as its constituent members, it is proper that a study of the state government should precede that of the Federal Government. As compared with the States the functions of the Federal Government are few: they are limited to the collective interests of all the States, such as foreign affairs, war, peace, treaties, regulation of commerce, coinage of money and regulation of the currency, etc. The powers of the State extend to the life, liberty, property, happiness, and welfare of the people more closely than the Federal Government, and in an infinite variety of ways. The single function of state legislation extends to all ordinary private law, such as contracts, wrongs, family relations,—in fact to all civil and criminal matters not involving a federal question or offense; to administrative law, such as local government, charitable and penal institutions, education, inspection and regulation of business by the State and of business carried on in the State. The State is the very heart of the Federal State.

13. **Local Self-Government Unaffected by State Control.**—The Legislature passes general laws for the whole State, but their enforcement is left chiefly to the local authorities. There is no State supervision of local administration. The State does, indeed, attempt the inspection and regulation of certain classes of business carried on in the State; but this is in response to the demands made by those engaged in the business, rather than upon the initiative of the State. Of purely administrative affairs there is no state oversight. "Law is central, in the sense of being uniform and the command of the central Legislature; and its prescriptions are minute: but function and executive power are local." So, if a sheriff, a

prosecuting attorney, a clerk of a court is not diligent and efficient in his office, who is to call him to account? There is no state officer who has the authority to do so. True, if he violates the law relating to his office he may be indicted, and upon conviction, may be fined, and perhaps, imprisoned; and he "may be removed from office for official misconduct, incompetence, neglect of duty, or gross immorality, in such manner as may be prescribed by general laws:" but until so removed he may continue to discharge the duties of his office until his successor is elected or appointed and qualified. But who is to make information and complaint? It is not the duty of any particular officer or citizen. Any citizen *may* do so; but few citizens *will* voluntarily take it upon themselves to play the role of informer or prosecutor. What then is the result? Incompetence, neglect of duty, misconduct are tolerated. Rarely does an information or complaint take place, and then its incentive is usually a personal motive, which robs it of all its virtue. In this lack of supervision the American system stands almost alone in the world. Local administration is, therefore, left practically unaffected by state control. "State administration represents only the unifying scheme of local government."

14. **The Law.**—If a constitution were to provide a frame of government and establish the necessary offices and define their powers and functions, all other details might be left to legislation. This the Federal Constitution practically does. Its permanent provisions, with the exception of one relating to fugitive slaves, which is now no longer of value, are entirely fundamental. All else is left to Congress. The two main divisions of the law are, therefore, (1) fundamental, or constitutional law, and (2) statute law.

(1) **Constitutional Law.**—"The fundamental law," says Mr. Macy, "provides for officers to carry on the government; it commands them to do certain things; it may confer power upon them; it may forbid them to do certain things; it makes known the methods by which the people wish to be governed."

When the constitution goes farther than this and introduces provisions to control the dealings of citizens with each other, it passes from matters fundamental and enters the field of ordinary statute." The theory as to the proper scope of constitutional law is clear enough; but the difficulty lies in the effort to put the theory into practice. Every State in the Union has put into its constitution some provisions that are matters for ordinary statutes, and in some States these provisions have swelled the constitutions to the dimensions, almost, of ordinary codes of laws. The disadvantages of such a practice are many and great. It embarrasses legislation; it encourages attempts at legislation intended to evade the restraints of the Constitution, and hence begets a certain disrespect for the highest authority of human law; it antagonizes and neutralizes the very powers which the legislative department is designed to exercise. To change even a single point calls for an amendment, which must be passed by both Houses of the Legislature by a two-third vote, and be ratified by the people at a general election It requires at least, ordinarily, two years in which to accomplish an amendment of the Constitution in the slightest respect, and involves an enormous expenditure of money. As a result inconveniences are endured, which a Legislature might correct if its legitimate authority were not taken from it. A rigid written Constitution is not absolutely necessary to the fulfilment of the activities of the State in government. "Each American State might now," says Mr. James Bryce, "if it so pleased, conduct its own business and govern its own citizens as a commonwealth 'at common law,' with a sovereign legislature whose statutes formed the highest expression of popular will .. .. .. This, however, no American State does, or has ever done, or is likely to do." The sad truth is, the people do not trust their own servants—the legislators—as fully as our system of government contemplates, and, in seeking to hobble them by constitutional restraints, have well nigh rendered all legislation of a real reformatory character impossible.

(2) **Statute Law.**—After what has just been said respecting constitutional law, statute law may be dismissed with the simple statement that it embraces all legislative enactments, in the nature of laws and ordinances, which are not included in the term constitutional law. The legislature enacts statutes; the people adopt constitutions.

15. **Sources of the Law in West Virginia.**—A great many people assume that the Constitution, the Code and the acts of the Legislature embrace all the law that is operative in the State. This is a great error. It is the intention, in the remaining paragraphs of this chapter, to point out the many sources of law in this State and to give a brief explanation of each.

(1) **The Constitution of the United States: Laws and Treaties of the United States.**—The Constitution of the United States and the laws made in pursuance thereof, and all treaties made under the authority of the United States, are the supreme law of the land; and all the judges and the people in every State are bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding. In other words, if any state Constitution or state law be in conflict with the Federal Constitution, a valid act of Congress, or a treaty made by the President duly ratified by the Senate, the state law must give way.

(2) **The Decisions of the United States Courts.**—Whenever an action or suit arises which raises a question under any federal law or treaty, the federal courts may finally determine the question; and when the decision is made it is binding upon all inferior and state courts. It sometimes happens that the federal courts declare some provision of the state constitution or some state statute null and void, because in conflict with federal law; and such decisions, when made, thereupon become a part of the law of the State.

(3) **The Constitution of West Virginia.**—The Constitution

laws, and treaties, is the highest utterance of law in relation to state powers and administration. Its general features will be discussed in the next chapter.

(4) **The Common Law of England.**—The Common Law of England, which is the law of immemorial custom, so far as it is not repugnant to the principles of the Constitution, is in force in West Virginia, except in those respects wherein it has been altered by act of the Legislature. The Common Law has existed in England time out of mind; or, as the law books put the phrase, it has existed "time whereof the memory of man runneth not to the contrary."

(5) **Certain Statutes of Parliament Prior to 1607.**—The right and benefit of all writs, remedial and judicial, given by any statute or act of Parliament made in aid of the Common Law, prior to the fourth year of the reign of James I, (the year of the settlement of Jamestown, 1607) of a general nature, not local to England, if consistent with our own Constitution and laws, are in force.

(6) **The Equity System of England.**—The principles and rules of the Common Law were very precise in their nature, exceedingly technical in practice, and inflexible in their application to particular cases. Unusual cases must necessarily arise under any system of law, growing out of special and peculiar circumstances, to which the rigid and strict rules of every-day law, if applied, would work injustice. The king had from time immemorial, sometimes administered justice in person, assisted by his counsellors. So in extraordinary cases application was made to the king for relief in order that he might "mitigate the rigor of the Common Law." Finally the chancellor came to act in place of the king. From these beginnings the courts of equity have been developed. There is a large body of Roman as well as English law that enters into equity practice. It is difficult to define equity. It may be said, "It is the application of the principles of right and justice to the legal adjustment of differences, where the law,

by reason of its universality, is deficient." A simple illustration of the deficiency of fixed law is given by Sir William Blackstone, the great commentator on English law. It so plainly illustrates the distinction between law and equity that it is reproduced here. "There was a law that those who in a storm forsook the ship, should forfeit all property therein; and that the ship and lading should belong entirely to those who stayed in it. In a dangerous tempest all the mariners forsook the ship, except only one sick passenger, who by reason of his disease, was unable to get out and escape. By chance the ship came safe to port. The sick man kept possession and claimed the benefit of the law. Now here all the learned agree that the sick man is not within the reason of the law." Therefore while the law construed to the letter would give him ship and cargo, equity and good conscience would not do so. All this great system of English equity, reenforced by American equity, is a part of the judicial system of West Virginia.

(7) **Decision of English Courts Prior to 1607.**—The English courts had the right to state the meaning of the laws of England; and their decisions upon such of those laws as we have adopted, rendered prior to their adoption, are binding as precedents upon us as well as upon English subjects.

(8) **Acts and Resolutions of the Legislature.**—The Legislature of a State has the right to pass any law that it is not prohibited by its own Constitution from passing, provided it be not contrary to the Federal Constitution, laws and treaties. These laws may be found in the Codes, and in the acts of the Legislature. In 1868 a Code was compiled by direction of the Legislature, which included all legislation of a general character to that date. Other editions have been printed from time to time since, and a new edition, compiling all general laws to date, was issued in 1900. But the private or special laws are not included in the Code; they are found in the acts of each session.

(9) **By-Laws and Ordinances of Public Corporations.**—The by-laws and ordinances of such public corporations as exist in aid of state government, such as cities, towns, counties, school districts, have the force of local laws. Most of the well-regulated cities and towns have a volume of printed laws and ordinances.

(10) **Decisions of the Supreme Court of Appeals.**—The decisions of the Supreme Court of Appeals upon any question of law, when concurred in by three out of the four judges, are binding authority upon all inferior courts in the State in cases raising a similar question. If the appellate court is evenly divided on a case coming up from a circuit court, the judgment of the circuit court is affirmed; but the case is not binding as a precedent. These decisions are printed in a series of volumes called the "*West Virginia Reports.*"

CHAPTER XXXIV.

THE STATE: THE CONSTITUTION.

1. **General Features.**—It is proposed in this chapter to give a general outline of the framework and structure of the state Constitution without going into an extended analysis of details. State constitutions usually may be cast into two main parts, namely, a bill of rights and a frame of government; but to these two features there may be added a third, which embraces those portions that are essentially fixed statutes. Our own constitution contains fourteen articles, one hundred and ninety-three sections, and about thirty-five large octavo pages set in long primer type. Measured by the standard of the Constitution of the United States it is more than twice as long.

2. **The Bill of Rights.**—A bill of rights usually precedes the state Constitution or forms its first article; but with us it is thrown in as the third article. Our Bill of Rights is derived from those rights and privileges that have been secured to Englishmen by four documents chiefly, familiar in English history, namely: the *Magna Charta*, which the barons compelled King John to grant at Runnymede in 1215; the Petition of Right, which the Commons exacted from Charles I in 1628; the *Habeas Corpus* Act passed by Parliament in 1679; and the Bill of Rights, which was passed by parliament with the sanction of William and Mary on their accession to the throne in 1689 after the Revolution that forced the retirement of James II. Our Bill of Rights contains twenty sections, but there is no close connection between any two or more of them. They are mere formal statements or rather abstract principles.

In fact most of these principles grew out of conditions existing under the old monarchy that are no longer present under our system, and the violation of these principles would scarcely be attempted now even if the Constitution were silent on the subject. Although it may be possible that they are no longer essentially necessary, it cost much blood and treasure to establish and maintain them, and they are cherished by posterity as monuments to the "eternal vigilance" of our ancestors, which was the "price of liberty." No adequate summary of the Bill of Rights can be attempted here. The document itself should be carefully read and studied. In general terms it may be stated that it declares the principles of democracy, of personal liberty, security of property, freedom of conscience, freedom of speech and of the press, the right of popular assembly, legal rights—civil and criminal, prohibits certain laws, forbids test oaths, defines the status of the civil and military power, and establishes the fundamental rights of citizens.

3. **The Frame of Government.**—All the other articles except the third relate to the fundamental structure of the state government. A mere outline alone is attempted. Article 1 treats of the relation of the State to the United States. It is perhaps a needless but harmless repetition of principles that are firmly established under the Federal Constitution and laws. The fourth section, however, provides for the division of the State into Congressional districts to be composed of contiguous counties, as nearly equal in population as may be. Article II is entitled "The State." It defines the counties; recognizes the citizens as the repository of the powers of government; defines who are citizens and declares their right to equal representation; fixes the property rights of aliens; defines treason and regulates the trial and punishment thereof; adopts the Great Seal of the State and prescribes its custodian; and makes regulations respecting writs, grants, commissions and indictments. Article IV relates to the election of officers and the

elective franchise, and fixes terms, powers, duties, qualification and compensation of public officers and agents, and the manner of their election, appointment, and removal. Article V separates the legislative, executive, and judicial departments. Article VI treats of the legislative department; Article VII of the executive; Article VIII of the judiciary; Article IX of county organization; Article X of taxation and finance; Article XI of corporations; Article XII of education; Article XIII of land titles; and Article XIV of amendments.

4. **Amendments.**—There are two ways in which the Constitution may be altered or amended, namely, by a convention elected by the people for the purpose, and by specific amendments proposed by the Legislature. We shall now consider each of these methods in turn.

(1) **By Convention.**—In order to call a convention to alter the Constitution the following steps are necessary: (a) the Legislature must pass a law submitting to the voters of the State, not less than three months after the passage of the law, the question of calling a convention; (b) the passage of another law at the same or some subsequent time, providing for the time and place of meeting, membership, and all other details for the convention, provided it shall be authorized at the election at which the question is submitted to the voters; (c) the acts and ordinances of the convention must be submitted to the voters of the State for ratification or rejection.

(2) **By Specific Amendment.**—The steps necessary to be taken for the submission and final adoption of an amendment are the following: (a) proposal of amendment by bill in either House of the Legislature, which must be read on three several days in each house, and agreed to on third reading by at least two-thirds of all members elected to each House, by yeas and nays entered on the journal; (b) a law must then be passed submitting the proposed amendment to the voters of the State

for ratification or rejection at a general election, after having been published in a newspaper in every county at least three months before such election; (c) if ratified by a majority voting on the question, the amendment is in force as a part of the Constitution of the State, from the time of its ratification. A number of amendments may be submitted and voted on separately at the same time.

CHAPTER XXXV.

THE STATE: THE LEGISLATIVE DEPARTMENT.

1. **The Legislature.**—The legislature embraces the law-making power of the State. The Legislature of West Virginia is bicameral, that is, two-chambered, one house called the Senate, the other the House of Delegates. The article relating to the legislative power includes about one-fourth of the Constitution; and, if we include the Bill of Rights, which is largely made up of restrictions upon the legislative power, it embraces fully one-third of the Constitution. The Governor, as the Chief Executive, may participate in legislation to the extent that he may approve or reject any bill passed by the two houses. At this point the legislative and executive powers overlap.

2. **The Senate.**—The Senate as at present constituted consists of twenty-six members, two being elected from each of the thirteen Senatorial districts into which the State is divided; but the number may be increased by the Legislature after each census of the United States. Senators are divided into two classes so that one only is elected from each district in November of each even year, for the term of four years. In this way the Senate is a continuous body, always having hold-over members with experience.

3. **The House of Delegates.**—The Constitution fixes the number of Delegates at sixty-five, subject to be increased after each Federal census. At present the House consists of seventy-one members, as determined by the apportionment following the census of 1890, elected for the term of two years by counties, and delegate districts composed of contiguous

counties. Some rules are laid down in the Constitution for the appointment of Delegates. The number of which the House is to consist shall be first ascertained. Next, the ratio of representation is obtained by dividing the whole population of the State by the total number of members. Every county containing a population of less than three-fifths of the ratio of representation so ascertained shall be attached to some contiguous county or counties to form a Delegate district. Every Delegate district, and every county not included in a Delegate district, is entitled to at least one Delegate. But in order to ascertain if they are entitled to more, the population of every Delegate district, and of every county not included in a Delegate district, is divided by the ratio of representation; and a Delegate is assigned to each, equal to the quotient so obtained excluding fractional remainders. The additional Delegates, necessary to make up the number of which the House is to consist, are then assigned to those Delegate districts, and counties not included in a Delegate district, which have the largest fractions.

4. **Members: Compensation, Qualifications, Disabilities.**—The members or the Legislature receive for their services the sum of four dollars a day and ten cents a mile for each mile traveled in going to and returning from the capital by the most direct route. The Speaker of the House and the President of the Senate receive six dollars a day each. No extra compensation can lawfully be made to any member on any account.

Each Senator must be at least twenty-five years of age, and must have been a citizen of the State for five years next preceding his election; but any citizen entitled to vote may be elected a Delegate. Every person elected as a Delegate or Senator must have been a resident within the district or county for which he is elected for one year next preceding his election, and if he remove from the district or county his seat is thereby vacated. The design of the law is that members shall be closely identified with the districts they represent.

No person holding a lucrative office under this State, the United States, or any foreign State; no member of Congress; no salaried officer of any railroad company; no sheriff, constable or clerk of any court of record; no felon; no defaulter in public money, is eligible to a seat in the Legislature. No Senator or Delegate may be elected or appointed, during his term, to any civil office of profit under the State, created, or whose emoluments were increased, during his term, except offices to be filled by the people; nor can he be interested in any contract with the State or any county, authorized by any law passed while he was a member. The reasons for these disabilities are apparent. The law contemplates that legislators shall be entirely disinterested, free, and unbiased by any personal or selfish interest.

5. **Vacancies: How Filled.**—It is the duty of the Governor to issue a writ of election to fill a vacancy which occurs during a recess of the Legislature. It is the duty of the presiding officer of the House in which a vacancy occurs during a session, to issue the writ, as well as in any case in which a vacancy exists for which no writ has been issued prior to the meeting of the Legislature. The writ is directed to the sheriff of the county, or counties composing the district in which the vacancy exists, and fixes the day for an election; and every sheriff must give notice to the commissioners of election in the several election precincts of his county, and must also give notice of the time and purpose of the election by publication in some newspaper in his county and by posting a copy of the notice at every place of voting in his county.

6. **The Capital.**—When the State was formed the Constitution provided "The seat of government shall be at the city of Wheeling until a permanent seat of government be established by law." Wheeling is situated in the Panhandle, the extreme northwest arm of the State, and was always looked upon as located too much at one side to become the permanent capital. The citizens of Charleston on the Great Kanawha

made offers of land and buildings, if that city should be chosen as the capital. In 1869 an act was passed making Charleston the seat of government, after April 1, 1870, and the offices of State were accordingly transferred. But Charleston was found to be inconvenient by reason of its inaccessibility. Wheeling awoke to the importance to that city of retaining the capital there. Five of her inhabitants pledged themselves to furnish without cost to the State "suitable accommodations" in the city for the public offices, if the seat of government should be removed there temporarily. The Legislature accepted the pledge, and passed an act, which on May 21, 1875, made Wheeling the seat of government until otherwise provided by law; and at the expense of Wheeling the movable property in Charleston, belonging to the State, was carried to the new capital, which remained the seat of government for nine years. The structure now used by the City of Wheeling and Ohio County as a public building was the Capitol. But agitation for a permanent location did not cease. Wheeling did not suit a large number of people in the State. So in 1877 an act was passed referring the question of the choice of a permanent seat of government to the voters for decision. Charleston, Clarksburg, and Martinsburg were voted for. It was necessary to a choice for one of these places to have a majority of all the votes; if this result was not secured at first, a second election was to be held to determine which of the two having the highest number of votes should be the capital. Charleston received a majority at the first election. The people of Charleston donated to the State land and buildings estimated to have cost $79,000. The act for removal declares on its face that it is a contract between the state and the donors. The present Capitol building was erected at an expense to the State aggregating upwards of $300,000, and on May 1, 1885, the seat of government was once more transferred from the Panhandle to the Kanawha Valley. After some years of wandering, during which it was characterized as a Capital on wheels," the seat of government became permanently

located. Although some agitation for its removal has spasmodically broken out on the part of some city or town desirous of becoming the seat of government, it is probable that the capital could not be removed from Charleston without "impairing the obligation of the contract." The location may be regarded as settled.

7. **Regular Biennial Sessions.**—The regular sessions of the Legislature are biennial, commencing on the second Wednesday in January in each odd year, and are limited to forty-five days, unless two-thirds of the members elected to each house vote an extension.

8 **Special Sessions.**—The Governor may convene the Legislature in special session, by proclamation, whenever, in his opinion, the public safety or welfare shall require it. It is his duty to convene it on application in writing of three-fifths of the members elected to each house.

9. **Organization of the Houses.**—A certificate of election for each member of the Legislature is forwarded to the Secretary of State at Charleston by the board of canvassers of each county; and it is the duty of the Secretary to submit to each House the certificates of the election of members, together with a list of persons for each House appearing by such certificates to be elected. The oldest member of each House, in point of service, present at the meeting of each regular session, calls the House to order and presides until the regular presiding officer, the President of the Senate, or the Speaker of the House of Delegats, shall have been elected and shall have taken his seat. In accordance with long established usage the Houses meet for organization at 12 o'clock, meridian. The Clerk of the old House calls the roll. The members whose names appear upon the list of the Secretary of State come to the bar and qualify by taking and subscribing the constitutional oaths. The next business in order is the election of a presiding officer, who, as soon as chosen, takes the chair and continues the organization. The next step is the election of a

Clerk, a Sergeant-at-Arms, and a Doorkeeper. The Clerk usually appoints his assistants. The presiding officer of each House appoints such assistant officers, committee clerks, pages, and other officers and employees, as the House may deem necessary. When the organization is completed, a committee is appointed to inform the other House that it is organized and ready to proceed to business, and another committee is appointed to wait upon the Governor and convey the same information to him. Thereupon the messenger of the Governor, usually his secretary, appears at the bar of the House so organized and presents the biennial message of the Governor.

10. **The Governor's Message.**—The purpose of a message is to give information to the Houses of the condition in general of the affairs of State. As a rule it contains a review of the administration in all departments, discusses important public questions, submits recommendations as to legislation in some instances, and files the reports of officers and boards as a part of the message for information in detail. Special messages may be sent in whenever the Governor deems any matter a subject of sufficient importance to call for an expression on his part to be communicated to the Houses.

11. **Rights and Privileges of Members.**—It is important that members of the Legislature should act with the utmost liberty, free from unnecessary restraint. So to this end they are privileged from arrest during the session and for ten days before and after the same, except for treason, felony and breach of peace; and in order that they may be courageous in speaking their minds, they can not be called to account in any court, or questioned in any other place, for words spoken in debate, or for any report, motion, or proposition in either House.

12. **Privileges of the Houses.**—Certain special privileges are given to each House: (a) each is judge of the election, qualication, and return of its own members; and no court can

review its action in this regard: (b) each determines the rules of its own proceedings: (c) each appoints its own officers, and may remove them at pleasure: (d) each may punish its own members for disorderly behavior, and with the concurrence of two-thirds of all the members may expel a member, "but not twice for the same offense:"* (e) each may provide for its own safety and the undisturbed transaction of its own business; and in the exercise of this right it may punish by imprisonment, not extending beyond the end of the session, any person not a member, for disrespectful behavior in its presence, for obstructing any of its proceedings, or officers in the discharge of their duties, or for any assault, threat, or abuse of any member on account of words spoken in debate: (f) each may adjourn for a period not exceeding three days without the consent of the other.

13. **Functions of the Legislature.**—The Federal Constitution, by the Tenth Amendment, provides that "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively or to the people." The legislative power of the State, therefore, extends to all subjects not delegated to the United States or prohibited by the Federal Constitution to the State, unless the Constitution of the State itself lays limitations upon the Legislature. But this is just what the Constitution of the State does: it limits the power of the Legislature, often to an extent that makes even desirable legislation impossible without a change of the Constitution. It would be easier to specify in detail the things the Legislature may *not* do than those that it *may* do. But the functions of the Legislature may be summed up in general terms thus: it fixes the rate and subjects of taxation; determines all questions relating to the collection and disbursements of state revenue; prescribes the terms of office, powers, duties, and compensation of all public officers and agents not provided for in the Con-

*Inasmuch as *expel* means to drive out, to dismiss, it is not quite clear just what is meant by the phrase of the Constitution, "but not twice for the same offense."

stitution; provides for a system of public education; and makes laws relating to the legislative, executive, and judicial departments of administration, the maintenance of public institutions, the regulation and inspection of business in the State, the organization of the militia, and other public interests.

14. **Restrictions on the Legislature.**—Both the Constitution of the United States and the Constitution of the State place limitations upon the legislative power of the State.

(2) **Restrictions of the Federal Constitution.**—The restrictions imposed by the Federal Constitution are such as by their nature are incompatible with the Federal system, if those powers were exercised by the State:

(a) No State can enter into any treaty, alliance, or confederation; grant letters of marque and reprisal, that is, issue commissions to private persons authorizing them to capture or destroy the ships of any foreign State, or of its citizens or subjects, as redress for an injury; coin money; emit bills of credit, that is issue paper money; make anything but gold and silver coin a legal tender in payment of debts; pass any bill of attainder, that is, an act of the Legislature imposing the death penalty, or outlawry, and extinguishing all civil rights of any particular individual; pass any *ex post facto* law, that is, a law making an act a crime that was not such at the time it was committed; pass any law impairing the obligation of contracts; or grant any title of nobility.

(b) No State can, without the consent of Congress, lay any tax or duty on imports or exports, except in the enforcement of inspections laws, and then the net proceeds of such taxes and duties go into the Treasury of the United States, and the laws are subject to the revision and control of Congress. No State can, without the consent of Congress, tax the tonnage of any ships, keep troops or ships of war in time of peace, enter into any agreement or contract with any State domestic or foreign, or engage in war, unless actually invaded or in imminent danger.

(c) No State can make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any citizen of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

(d) No State can assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave.

(2) **Restrictions of the State Constitution.**—Among the laws which the Legislature is forbidden by the state Constitution to pass are the following: (a) Authorizing lotteries or gift enterprises; (b) extending the term of any public officer after his election; (c) conferring upon any court or judge the power of appointment to office; (d) establishing any board or court of registration of voters; (e) granting a charter to any church or religious denomination; (f) special laws in a long list of enumerated cases, and all other cases where a general law would be proper and can be made applicable; (g) compelling any one to frequent or support any religious worship, place, ministry whatever; imposing any burden or disability on account of religious opinion, prescribing any religious test whatever, or laying any tax in support of religion; (h) conferring any hereditary emoluments, honors, or privileges. Other restrictions have been noted elsewhere.

15. **Powers of the House not Possessed by the Senate.**—The only power possessed by the House that is not possessed by the Senate is the power of exhibiting articles of impeachment against an officer of the State for maladministration, corruption, incompetency, gross immorality, neglect of duty, or any high crime or misdemeanor.

16. **Powers of the Senate not Possessed by the House.**—The Senate has the sole power to try impeachments; and the consent of a majority of all the Senators elected, taken by yeas and nays, is necessary to confirm all officers appointed by the

Governor, whose offices are established by the Constitution, as well as those created by law, and whose appointment or election is not otherwise provided for.

17. **Impeachment.**—An impeachment under the law of West Virginia is the formal accusation and arraignment of any officer of the State by the House of Delegates for trial by the Senate for any offense named in the Constitution (par. 15, preceding). The exhibition of articles of impeachment by the House and the trial by the Senate constitute the most solemn procedure known to the law. We shall therefore attempt a brief outline of its most important features.

(1) **The Accusation.**—The accusation is made by the House of Delegates by articles of impeachment, sometimes accompanied by specifications, setting out with all the accuracy of an indictment the specific charges of maladministration, or the particular high crime or misdemeanor. The House corresponds in a measure to the grand jury of the court, and its articles of impeachment are essentially a bill of indictment. Prosecutors, called managers, are appointed by the House to carry the articles to the Senate and to conduct the trial on behalf of the House. The House by a special messenger informs the Senate that articles of impeachment have been agreed upon, and that managers have been appointed to conduct an impeachment against the officer accused. The Senate sends back a special messenger, who informs the House that the Senate is ready to receive the managers for the House for the purpose of exhibiting such articles of impeachment as the House may have to present. The managers appear and are ushered by a doorkeeper to the bar of the Senate. The Sergeant-at-Arms, by direction of the President, makes proclamation, after which the articles are formally exhibited, and the President of the Senate informs the managers that the Senate will take proper orders on the subject of the impeachment, of which due notice will be given to the House. On the following day, at the latest, the Senate convenes for the con-

sideration of the articles, and must continue in session from day to day (Sundays always excepted) until final judgement, unless otherwise ordered by the Senate, and as much longer after judgement as may be deemed necessary.

(2) **The Arraignment and Trial.**—The President of the Supreme Court of Appeals presides upon the trial of an impeachment, unless it be improper for him to act, in which case any other judge of that court, designated by it, may preside. A committee from the Senate waits upon the President of the Supreme Court of Appeals and escorts him to the Chair in the Senate Chamber, at the hour for the sitting. One of the judges of the State administers to the President of the Supreme Court of appeals the solemn oath of his office. The roll of the Senate is then called and the President of the Court of Impeachments administers to them the customary oath, which is also administered to absentes, if any, as they appear. The President thereupon announces that the Senate is organized ready for the trial, and the Sergeant-at-Arms makes proclamation. Rules of procedure are adopted. A messenger is sent to inform the House that the Senate is organized for trial. The managers soon appear at the door of the senate, where their presence is announceed by the Doorkeeper, and the President invites them to take the seats assigned to them at the bar of the Senate. The managers present the articles of impeachment and ask that process be taken against the accused, and that he answer at the bar of the Senate the articles of impeachment. A summons is accordingly issued. The Sergeant-at-Arms serves a copy of it upon the accused and makes return of the time and manner of service under oath before the Clerk in the Senate. Thereupon the Sergeant-at-Arms makes proclamation calling upon the accused to appear and answer the articles of impeachment exhibited against him. He may appear in person or by attorney. If present he advances to the bar, if not already there, with his attorneys, who take the seats provided for them. The answer of

the accused is made to the several articles of impeachment, and the replication of the managers follows. The managers then proceed with the formal arraignment of the accused by speaking in support of the articles and explaining their general scope and significance to the Court of Impeachment, and that the managers stand ready with evidence to make good the accusations of the House. The taking of testimony follows.

On each day, when the hour for the sitting arrives, the President of the Supreme Court of Appeals enters the Senate Chamber and takes the Chair; the Sergeant-at-Arms makes proclamation; the managers appear as usual and take their places; the accused and his counsel also appear and resume their seats; the roll of the Senate is called, and the journal read; the examination of witnesses goes on; and so from day to day the trial proceeds. When the taking of the testimony is completed, and the arguments of counsel are finished, the Senate is closed for deliberation.

The articles are usually voted on separately, after having been read by the Clerk. The roll of the Senate is called; and each Senator as his name is called rises in his seat and the following question is propounded by the President: "Mr. Senator ———, is the respondent guilty or not guilty of the high crimes and misdemeanors alleged against him in this article?" To which the answer must be "guilty" or "not guilty." It requires the concurrence of two-thirds of all the members elected to the Senate to convict upon any article. If the finding be "not guilty," a judgment is entered that the accused stand acquitted of the charges set forth against him. But if two-thirds find him guilty upon any article, the question is then upon the penalty to be imposed. Judgment in case of impeachment may extend (a) to removal from office, and (b) to disqualification to hold any office of honor, trust, or profit under the State. Upon a decision of each of these questions judgment is entered accordingly. But the penalty of removal may be inflicted without the penalty of disqualifi-

cation thereafter.' Whatever the judgment may be a copy thereof is served upon the officer convicted, and copies are certified to the Secretary of State, the Governor, and the House. And thereupon the Court of Impeachment adjourns without day.

18. **Procedure in the Legislature.**—Partly to avoid clash between the Houses and partly for reasons of public policy, certain provisions have been put into the Constitution regulating in part the manner in which the Legislature shall proceed in the dispatch of public business. In all respects not determined by the Constitution each House makes the rules of its own procedure; and both Houses by a set of joint resolutions determine the rules governing their mutual relations.

(1) **Quorum.**—A quorum is the number of members required in any deliberative assembly for the legal transaction of business. In the West Virginia Legislature a majority of the members elected to each House constitutes a quorum; but a smaller number may adjourn from day to day and may compel the attendance of absent members in such manner and under such rules and penalties as the House may provide.

(2) **Publicity of Proceedings.**—The sessions of the Houses are open to the public, except when the Senate goes into executive session to consider the nominations of the Governor for certain offices. The rule is that only members, ex-members, officers, heads of departments, the Governor's private secretary, and judges of courts may be admitted to the floor; but others may be admitted by the presiding officer. Owing to the poor arrangement of the chambers for the accommodation of the public, it has been the practice to allow the utmost freedom of access to the floors consistent with order and convenience. In order that the public may know what is done, as well as for the information of the officers and members, each House is required to keep a journal of its proceedings,

and to publish it from time to time. All proceedings are entered therein together with all votes by yeas and nays when required by law or called for by one-tenth of the members present. But no official record is made of the debates. The fragments preserved in the accounts furnished the newspapers by the reporters are the only record of debates in the Houses, some of which are unique in their originality.

(3) **Fixing Responsibility.**—In order that the people may know how their representatives vote, one tenth of all the members present at any sitting may demand the yeas and nays on any question. When the demand is sustained, the Clerk calls the roll of members, and each, unless excused by the House, must vote, and a record of the vote is entered on the journal. The yeas and nays are recorded on every vote taken upon the passage of a bill.

(4) **Executive Session.**—When the Governor submits to the Senate his nominations in writing for the appointment of the officers whom he is authorized by law to appoint, the Senate goes into executive session to consider them. In executive session the Senate is cleared of all persons, except the Clerk and his assistants, the Sergeant-at-Arms, and the Doorkeeper, all of whom are sworn to secrecy. The Senate is a coordinate part of the appointing power. The Governor may nominate, but the Governor and Senate appoint. It is essential that each Senator should be absolutely free from restraint. Each takes an oath that he will keep secret the confidential communications made by the Governor to the Senate, and all proceedings thereon, until by unanimous vote of the members present the injunction of secrecy shall be removed. All information and remarks touching the character or qualifications of any person nominated to office by the Governor shall be kept secret. The records of the executive sessions are kept in separate books.

(5) **Adjournments.**— Each House may adjourn at any time, after it has assembled, for a period not exceeding three days. If it desire to adjourn for a longer period, the consent of the other House must be obtained. If either house could adjourn at will, without consulting the other, public business might at times be seriously interrupted. The Legislature, both Houses consenting, may adjourn to some place other than that in which the Legislature is sitting, when, in its opinion, the public safety or welfare, or the safety or health of the members shall require it. Each House may take a recess for any period within the day without adjournment.

19. **Committees.**—For convenience of consideration of the many matters submitted to the Legislature, the Houses are divided into groups of men called committees. The chief work of legislative bodies is perfected by committees. They discuss the merits and demerits of bills, and put into proper form and language such as they think should pass. Committees are usually appointed by the presiding officer of each House. A majority of the members on each committee is selected from the political party in control of the House for which the appointment is made; and if it be a joint committee, the party having a majority in the whole Legislature claims the majority. There are several kinds of committees.

(1) **Standing Committees** are permanent and are selected at the beginning of each session. In the Senate (session of 1899) there were twenty-one standing committees, which considered matters relating to the following subjects: Privileges and Elections; Judicial Matters; Finance; Education; Municipal Corporations; Roads and Navigation; Banks and Corporations; Public Buildings and Humane Institutions; Penitentiary; Railroads; Militia; Federal Relations; Immigration and Agriculture; Mines and Mining; Labor; Claims and Grievances; Forfeited, Delinquent, and Unappropriated Lands; Public Printing; Rules; Public Library; Examination of Clerk's Office. The House had substantially the same committees.

(2) **Select Committees** are raised for a special purpose and are usually discharged when the duty is performed.

(3) **Joint Committees** are raised by a joint resolution of the House for some special purpose. There is, however, one joint standing committee, namely, the Committee on Enrolled Bills, which consists of five members from each House.* There is no more important committee in the Legislature. Bills come from the Houses sometimes with amendments pasted upon them in great numbers, and but for the utmost care many mistakes would be made in the preparation of the enrolled bill for the signatures of the presiding officers and the Governor. Joint committees sometimes visit and inspect the public institutions of the State.

(4) **The Committee of the Whole** is organized whenever a deliberative body resolves itself into a committee to consider any subject committed to it, generally some bill, before it comes up for final passage. Great freedom in debate is allowed in committee of the whole. When a House resolves itself into committee, the presiding officer appoints a member to preside; and then leaves the Chair. The Committee of the Whole never adjourns; it rises and reports to the House. The presiding officer resumes the Chair and the Chairman of the committee reports its action to the House. No record is made of the proceedings of the committee, except so much as may be embodied in the report by the Chairman.

20. **How Laws are Made.**—A bill is a written proposal of a law introduced into one of the Houses of the Legislature by one of the members thereof, or by a committee. It is not possible in this work to give all the accidents that may befall a bill from its introduction to its rejection or passage. Nevertheless, we shall try to indicate in the following paragraphs the main course of a bill that meets with no successful opposition, indicating at times opposition that might be fatal. If the student would understand all that may happen to a bill in

*See *post* 20 (8).

stormy career, he must study carefully parliamentary law and must have abundant opportunities for observing procedure and practice thereunder. Mr. Reed says: "Parliamentary law is not a series of arbitrary rules, but a plain, consistent system, founded on common sense, and sactioned by the experience of mankind." But for all this it is intricate, and a large degree of experience is necessary to become adept in its practice.

(1) **Introduction.**—Bills may be introduced at the hour fixed in the daily order of business for receiving bills, or they may be introduced on leave being granted, which is seldom refused. The member rises in his seat, addresses the presiding officer, and, if he receives recognition, offers his bill, naming its title. A page carries it to the Clerk, who reads it by title, and, under the direction of the presiding officer, refers it to the proper committee, unless it be a bill brought in by a committee.

(2) **Reference to a Committee.**—Owing to the great number of bills introduced, it is impossible for the Legislature to consider all of them in detail. Indeed, it is impossible for that body to consider carefully the small number of bills actually passed in a limited session of forty-five days. The average number of bills and joint resolutions introduced during a session is about 500. As a matter of fact, during the session of 1899, not a single bill became a law that was not, at some stage of its career, taken up out of order and considered under a suspension of rules. The rules controlling legislation as laid down in the constitution and in the manual of the two Houses, render legislation in strict compliance with them practically impossible. In the attempt to overcome some of these difficulties an elaborate committee system has been devised; but the trouble is the committees are not allowed time in which to consider bills. Nevertheless, if the rule be not dispensed with, every bill must go to a committee. The committee may report it back "with recommendation that it do

pass," or that it "do not pass," or without recommendation;" or it may reconstruct the bill, or put a new bill of its own in its place as a substitute, and report it to the House with or without recommendation; or it may *pigeon-hole* the bill; that is, file it away and never report it unless required to do so by an order from the House. A bill may be recommitted to a committee at any stage of its progress before final passage. After a bill is reported by the committee in the House in which it originated, it goes upon the calendar on first reading.

(3) **Bills on First Reading.**—No bill can become a law until it has been fully and distinctly read on three different days in each House, unless in case of urgency, by a vote of four-fifths of the members present taken by yeas and nays on each bill, this rule may be dispensed with. Before reading a bill the Clerk announces whether it is the first, second, or third reading. On first reading which is for information, no motion is in order except a motion to reject the bill; and if the report of the committee be against the bill, the presiding officer puts the question without a motion, "Shall the bill be rejected?" If the House refuses to reject it, it is ordered to second reading, unless a different disposition be made of it.

(4) **Bills on Second Reading.**—A bill on second reading must be printed and a copy delivered to each member before further consideration, except in cases of emergency. On second reading, which is chiefly for perfecting the bill by amendment, any two members may demand that it be read section by section for amendment; and, when all amendments have been disposed of, the bill may be advanced to its engrossment and placed upon the calendar on third reading. It is on the second reading of a bill that the House usually goes into committee of the whole for its consideration.

(5) **Bills on Third Reading.**—An engrossed bill, which is one written out in full with all amendments in proper place after second reading, must be fully and distinctly read This

is a requirement of the Constitution which can not be dispensed with even by unanimous consent. Upon the completion of the third reading the question is, "Shall the bill pass?" Debate is then in order. Finally the roll is called and each member present answers as his name is called, yea or nay. A majority of the members present must vote yea or the bill is lost. If passed, it is carried over to the other house by a member appointed by the presiding officer, who announces its passage and requests the concurrence of the other House. But the Clerk of one House may communicate any message to the Clerk of the other, after adjournment, and any message so sent shall be received by the House to which it is sent whenever it may be in session. A message by the Clerk announcing the passage of a bill transmits the bill and requests the concurrence of the House to which it is sent. This is the better plan, though less formal. It saves time, and there is less danger of losing track of a bill. This is the practice followed in the Congress.

(6) **Course of the Bill in the Second House.**—A bill goes through a course in the second House similar to that in the House in which it originated. On its introduction in the first House it is referred to a committee, and when it comes back from the committee is placed on the calendar on first reading; but in the second House it goes on the calendar on first reading when reported from the first House. When it comes up in the second House on first reading, it may be rejected on motion at any stage of the reading. If not rejected, it is regarded as ordered to a second reading, and unless otherwise specially directed by the House, is referred to a committee and printed, unless already printed. Whether rejected, or passed, with or without amendment, the action of the House is communicated to the House in which the bill originated.

(7) **Amendments, Disagreements, Conferences.**—Here may arise a complication of proceedings too intricate for discussion in this book. There may be amendments, and amendment of

amendments, from which may follow disagreement between the Houses. When a disagreement is reached, a conference is generally asked for by one House or the other. Before a bill can be passed the two Houses must agree upon every point. For the purpose of effecting such agreement a conference committee, composed of three managers from each House, is appointed, if the conference is granted, as it always is when asked for. Only the points in dispute are considered by the conference committee Four out of the six members, at least, two from each House, must concur in any report to the Houses. If the conference committee agrees, and the Houses adopt the report of the conferees, the difficulty is overcome and the bill is passed. In case of disagreement other conference committees may be appointed on the same bill. But if in the end there is still disagreement the Houses adopt a motion to adhere, and the bill fails.

(8) **Enrollment of Bills.**—Whenever a bill has passed both Houses, it goes to the Committee on Enrolled Bills, whose duty it is to have it enrolled by the enrolling clerks, that is, plainly and accurately written on specially prepared parchment or paper, to compare the original with the enrollment thereof, to correct any errors and omissions that may be discovered, and to make report of such enrollment to the Houses.

(9) **Authentication by Speaker and President.** — After enrollment, examination, and report, by the Committee on Enrolled Bills, the enrolled bill or resolution is signed in each House, first by the Speaker of the House and then by the President of the Senate, and the roll is endorsed by the Clerk of the House in which the measure originated. It is then ready to be presented to the Governor for his action.

(10) **Action by the Governor.**—The Committee on Enrolled Bills carries the measure to the Governor. The committee reports to each House in writing the exact day on which each bill is presented to the Governor, and the report is carefully

entered on the journals. A bill may meet with one of three fates at the hands of the Governor.

(a) If he approves the bill, he may sign it; and thereupon it becomes a law.

(b) If he disapproves it, he shall return it with his objections to the House in which it originated. This action is called a *veto*, which means, I forbid. The objections are entered on the journal and the House reconsiders the bill. If a majority vote in favor of the bill, it shall then be sent with the objections to the other House by which it shall also be reconsidered; and, if a majority there vote in favor of it, the bill becomes a law notwithstanding the Governor's veto.

(c) If, within five days after it shall have been presented to him (Sundays excepted), the Governor shall neither sign the bill nor return it with his objections, it shall become a law in like manner as if he had signed it, unless the Legislature by adjournment prevent its return; in which case it shall be filed with the Governor's objections in the office of the Secretary of State, within five days after adjournment, or become a law. So in West Virginia there is no *pocket veto** as there may be with the President of the United States and in some of the States.

As a matter of fact, although a bare majority will override the Governor's veto, great respect is paid to his objections, and few bills, unless purely political measures, are passed in face of his disapproval.

11. **Report of Governor's Action.**—All bill signed or disapproved by the Governor before adjournment are reported by him, through his secretary, to the House in which they originated, and the reports are entered on the journal. Thus from the introduction of a bill to the moment when it becomes a law, the record of every stage of its progress is complete and may be traced in the journals.

* "The act of a chief magistrate, who, where the legislative session will end within the period allowed for returning a measure with the signature or veto, simply retains it and causes it to fail without a direct veto."—*Standard Dict.*

(12) **When Laws Take Effect.**—No act takes effect until the expiration of ninety days after its passage, unless the Legislature by a vote of two-thirds of the members elected to each House, taken by yeas and nays, direct otherwise. The postponement of the time when a law takes effect is designed, of course, to prevent surprise by the sudden passage of a law of which the people could have no knowledge. No law carrying a penalty ought ever to go into effect until an opportunity has been given the people to know the fact; for "ignorance of the law excuseth no man."

(13) **Keeper of the Rolls.**—The Clerk of the House of Delegates is the Keeper of the Rolls. As such he has the custody of all the acts and joint resolutions passed by the Legislature. It is his duty to have them carefully recorded in a fair and distinct hand, in a record book kept exclusively for that purpose. He is required to prepare the acts of the Legislature and the journal of the House, together with all matter required by law to be printed therewith, for publication, and to superintend the publication thereof; but the Clerk of the Senate prepares the journal of that House for publication and superintends the work.

(14) **Distribution of Laws.**—When the laws and the journals are published, they are delivered to the Secretary of State by whom copies are distributed to every judge and clerk of a court, to every state and county officer, to every public library and every institution in the State, to every member of Congress from the State, to the President, the Attorney General, and the Librarian of Congress, to every federal judge, clerk, attorney, and marshal in the State, and to the Governor of every State and Territory. The remainder of an edition of 2500 copies is sold by the Secretary of State at the actual cost to the State, and the proceeds are paid into the Treasury.

21. **The Joint Assembly.**—The Joint Assembly consists of the entire Legislature, including the Senate and the House of Delegates, sitting as one body. It may meet for one of three

purposes provided for by law, namely: (a) for publishing the returns of elections for the executive officers of the State; (b) for the determination of a contest for the office of Governor; and (c) for the election of United States Senators.

(1) **Publication of Vote for Executive Officers of the State.**—The certificates of the election of Governor, Auditor, Treasurer, State Superintendent of Free Schools, and Attorney General are transmitted by each county board of canvassers to the Secretary of State under seal plainly endorsed. The Secretary of State delivers the same, unopened, to the Speaker of the House of Delegates, on the first day of the next session of the Legislature. The Houses as soon as organized, and before proceeding to other business, meet in Joint Assembly in the hall of the House of Delegates. The Speaker of the House as presiding officer opens and publishes the returns in the presence of a majority of each house of the Legislature. In each case the person having the highest number of votes for the office named is declared duly elected thereto; and if two or more persons have an equal and the highest number of votes for the same office, the Legislature by joint vote chooses one of them to fill the office.

(2) **Determination of Contested Election for Governor.**—The Legislature may meet in Joint Assembly, under the presidency of the President of the Senate, to determine a contest for the office of Governor. The petition, notices, and depositions of the contestants, as well as the answer, notices, and depositions of the contestee, are referred to a joint committee consisting of two Senators and three Delegates elected by ballot in each House, which examines all the papers referred to it and makes report to the Joint Assembly. The right to the office is then determined by resolution of the Joint Assembly.

(3) **Election of United States Senators.**—The election of Senators in Congress is governed by federal law alone, except that the State fixes the place where the election may occur. When a State is entitled to choose a Senator, each House, on the

second Tuesday after the meeting of the Legislature, proceeds to vote for a Senator in Congress. The vote must be open and *viva voce*, and the result in each House is entered on the journal. On the following day, at twelve o'clock, meridian, the House convenes in Joint Assembly. The Senate in a body, preceded by the Sergeant-at-Arms, the President, and the Clerk, repairs to the hall of the House of Delegates. The Sergeant-at-Arms of the House annouces the presence of the Senate. The President then addresses the Speaker, stating that the Senate has assembled in the hall of the House of Delegates for the purpose of carrying into effect the Act of Congress for the election of a United States Senator. The Speaker invites the President to take the Chair as presiding officer of the Joint Assembly. The roll of each House is called by its own Clerk to ascertain if a majority of each House is present. The journals of the preceding day are read, and the voting on the preceding day is announced. If the same person is found to have received a majority of all the votes in each House, he is declared elected without a vote in the Joint Assembly; but if not, the Joint Assembly then proceeds to choose a Senator by a *viva voce* vote of each member present, and the person who receives a majority of all the votes of the Joint Assembly (a majority of all the members elected to each House being present and voting), is declared elected. If no person receives such majority on the first day, the Joint Assembly is required to meet at twelve o'clock, meridian, on each succeeding day during the session, and take at least one vote until a Senator is chosen or the Legislature adjourns without day. The Joint Assemby may take as many votes on any day as it chooses, but it must take at least one vote on each day. If a vacancy occurs during the recess of the Legislature, the Governor may make a temporary appointment until the next meeting of the Legislature, which shall then fill the vacancy. It has heretofore been held that if the vacancy occurs during the session, or if the Legislature meets and adjourns without filling the

vacancy already existing, the place must remain vacant until the next session, because the Legislature has refused to provide for filling it. In other words the Governor is not authorized to do what the Legislature is charged with doing and has failed to do.

CHAPTER XXXVI.

THE STATE: THE EXECUTIVE DEPARTMENT.

1. **Real Character of the Executive.**——The executive of West Virginia consists of six pieces, namely, the Governor, Secretary of State, State Superintendent of Free Schools, Auditor, Treasurer, and Attorney General. The executive of the United States is in one piece. The President appoints the heads of the executive departments and can remove them at pleasure. He is the responsible head, and the members of his cabinet are merely his advisers and executive agents for administration, whose advice when given he may take or disregard. Not so with the Governor of the State. The heads of the departments composing the executive are elected by the people, and are almost entirely independent of each other. In brief the state executive is composed of a *commission* of which the Governor is chief.

2. **Eligibility of Executive Officers.**—The Governor must have been a citizen of the State for five years next preceeding his election, and must have attained the age of thirty years at the beginning of his term of service. The Attorney General must likewise have been a citizen for five years and must have attained the age of twenty-five years at the beginning of his term. All the other executive officers must be citizens of the State, twenty-one years of age and entitled to vote No person, except a citizen entitled to vote, may be lawfully elected or appointed to any office in the State, or in any county or municipality.

3. **Public Officers: General Provisions.**—It is doubtful whether the Governor and the other executive officers of the

State taken together can be properly described as "the entire executive:" because the execution of the laws of the State does not lie wholly within their powers, but is shared by the local officers chosen by the counties, districts, and towns. Each officers, state and local, has a share in the execution of the law that is incumbent upon him by the force and operation of the Constitution and statutes of the State. No officer is, in any real sense, under the administrative control of any other officer, but on the contrary is subject to the control of the law alone.

(1) **Election of Officers.**—The general elections of state and county officers are held on the Tuesday next after the first Monday in November in each year ending in an even number.

(2) **Terms of Officers.**—The term of every state executive officer is four years, commencing on the fourth day of March next after his election. The terms of other officers are fixed by law and are not uniform.

(3) **Oath of Office.**—Every person elected or appointed to an office in this State, before proceeding to exercise the authority or discharge the duties thereof, must make oath or affirmation, that he will support the Constitution of the United States and the Constitution of the State of West Virginia, and that he will faithfully discharge the duties of his office to the best of his skill and judgment. No other oath, declaration, or test, not contained in the Constitution, can be required of him.

(4) **Residence.**—All the officers of the Executive Department, except the Attorney General, are required to reside at Charleston, the seat of government, and to keep there the public records, books, and papers pertaining to their offices. An Executive Mansion, furnished by the State, is provided for the Governor.

(5) **Salaries.**—The Governor receives a salary of $2,700.00 a year. Any person who may act as Governor is entitled to

receive the emoluments of the office. The Secretary of State receives an annual salary of $1,000.00 and fees estimated to amount to $15,000.00 a year and upwards; the State Superintendent of Free Schools, $1, 500.00; the treasurer, $1,400.00; the Auditor, $2,000.00, and fees amounting to probably $20,000.00 a year; the Attorney General, $1,300.00, and the fees of his office. No additional emolument or allowance can be lawfully made or paid out of the treasury of the State to any one of the executive officers on any account.

(6) **Disqualification.**—Any officer of the state may be impeached for maladministration, corruption, incompetency, gross immorality, neglect of duty, or any high crime or misdemeanor. No person, who may have collected or been entrusted with public money, whether of the State or any county, district, or municipal organization, shall be eligible to any office in the State, until such money shall have been duly accounted for and paid over according to law. No citizen, who shall fight a duel in or out of the State, send or accept a challenge to do so, act as a second, or knowingly aid or assist in such duel, shall hold any office in the State. No state executive officer can hold any other office during his term, and the Governor is ineligible to succeed himself for four years after the end of his term.

(7) **Reports of Subordinate Officers.**—Each subordinate officer of the Executive Departments of the State, as well as each officer in charge of each of the public institutions in the State, is required to report to the Governor at least ten days preceding each regular session of the Legislature, the condition, management, and expenses of his department; and the Governor may further require such information under oath at any time.

(8) **Bonds Approved by the Governor.**—The Secretary of State, Auditor, Treasurer, State Superintendent of Free Schools, and State Librarian are required to give bonds in penalties fixed by law and approved by the Governor. The bond of the Sec-

retary of State is filed in the office of the Auditor, and those of the other officers in the office of the Secretary of State.

4. **Governor as Chief Executive.**—For the sake of convenience in study the usual powers of the Governor may be grouped under four general heads:

(1) **As to the Legislature.**—(a) It is his duty at the beginning of each session to inform the Legislature by message of the condition of the State, and to recommend such measures as he may deem necessary for the good of the public. His message must be accompanied by a statement of all moneys received and paid out by him from any fund subject to his control, with vouchers therefor; and at the beginning of each regular session it is made his duty to present an estimate of the amount of money required to be raised by taxation for all purposes.

(b) **Extra Sessions.**—The Governor may convene the Legislature by proclamation, whenever in his judgment the public safety or welfare may require it; and it is his duty to convene it, whenever three-fifths of the members elected to each House make the application in writing He may convene the Legislature at another place, whenever it can not safely assemble at the seat of government.

(c) **Approval and Veto of Bills.**—He has the power to approve or to disapprove by his veto any bill passed by the Legislature. He may approve or disapprove any items in an appropriation; but all items not disapproved shall have the force and effect of law, and the items disapproved may be passed over his veto as in other cases.

(2) **As to Enforcement of Law and Order.**—As the Chief Executive of the State the Governor is charged by the Constitution to "take care that the laws be faithfully executed." He is Commander-in-Chief of the military force of the State, and may call out such portion of the militia as he may deem advisable, to enforce the execution of the laws, to suppress

insurrection and to repel invasion. The law clothes him with extensive powers for its enforcement, which are practically without limit in the case of organized opposition.

(3) **As to Appointments and Removals.**—The Governor's powers of appointment may be summed up in two general classes, first, original appointments, and secondly, temporary appointments.

(a) **Original Appointments.**—The Governor nominates and by and with the advice and consent of the Senate appoints, all officers whose offices are established by the Constitution or created by law, and whose appointment or election is not otherwise provided for by law. In this class are included the Secretary of State, the Adjutant General and his assistants, the Librarian, notaries public, military officers, inspectors of mines, all boards having control of state institutions, and all other inferior officers and employes of the State. All judges, the Attorney General, notaries public. and military officers receive from the Governor a document called a commission, which runs in the name of the State, is signed by the Governor, and sealed with the seal of the State. The Governor may remove any officer whom he may appoint in case of incompetency, neglect of duty, gross immorality, or malfeasance in office, and may fill the vacancy so created. A vacancy happening in any such office during the recess of the Senate may be filled until the next meeting of the Senate, when a nomination must be made and submitted to the Senate for confirmation. No one once rejected by the Senate can be reappointed.

(b) **Temporary Appointments.**—If a vacancy occur in the office of Auditor, Treasurer, State Superintendent of Free Schools, Attorney General, or judge of any state court, the Governor may fill the vacancy by appointment for the unexpired term, or until a successor is elected at the next general election and is qualified, depending upon the length of the unexpired term at the time the vacancy occurs. A vacancy

in the Senate of the United States happening during the recess of the Legislature may be filled by the Governor by appointment until the next meeting of the Legislature.

(4) **As to Remissions and Pardons.**—The Governor has power to remit fines and penalties under regulations prescribed by law. He may commute a death penalty to imprisonment. He may grant reprieves and pardons after conviction, except in cases of impeachment. A remission of a fine or penalty consists in reducing the amount or freeing the party convicted of the penalty altogether. A reprieve suspends or postpones temporarily the sentence of a court. A pardon sets the convict free from the execution of the sentence; it may be an entire, partial, or conditional relief from the legal consequences of a crime. In order to guard against an irresponsible use of this extraordinary power the Governor is required by the Constitution to communicate to the Legislature at each session the particulars of every case of fine or penalty remitted, of punishment commuted, and of reprieve or pardon granted, with the reasons for his action. By a recent law an advisory board of pardons has been created whose duty it is to investigate all applications for pardons and remissions of fines, and make recommendations to the Governor; but the Governor is not obliged to accept the recommendations of the board. He may still act independent of its report. The board is appointed by the Governor once in four years, and is composed of two competent persons with the qualifications of voters one from each of the two political parties representing the highest number of votes cast at the last preceding election.

5. **Vacancy in Governorship: How Filled.**—Most of the States have a Lieutenant Governor who presides in the Senate and succeeds to the office of Governor in case of a vacancy. If a vacancy occur in West Virginia before the expiration of the first three years of the term, a new election is contemplated by the Constitution, either general or special, to fill the vacancy. In the meantime the President of the Senate *acts* as Governor:

if, from any cause, he can not act, then the Speaker of the House may act; and in all other cases, when there is no one to act as Governor, the Legislature may choose one by joint vote. There has been but one instance of a vacancy in the governorship of the State. In 1869 Governor Boreman was elected to the United States Senate and Daniel D. T. Farnsworth, President of the Senate, assumed the duties of the office and acted as Governor for the space of six days, when, on March fourth, he was succeeded by William E. Stevenson, who had been been elected for the term beginning on that day.

6. The Secretary of State.—The Secretary of State occupies a confidential relation to the Governor, and is required to take an oath to keep secret such matters as the Governor may require him to conceal. In the beginning the Secretary of State was elected at the same time and for the same term as other State officers; but disagreement and friction having at one time arisen between the Governor and the Secretary of State, it was thought advisable, in 1872, to amend the Constitution in this respect, so as to make the Secretary of State the appointee of the Governor and subject to removal by him. His powers and duties may be placed in two general classes, first, those properly pertaining to his office as Secretary of State, and secondly, those devolving upon him as Keeper of the Seals.

(1) **Powers and Duties as Secretary.**—He keeps a journal of executive proceedings; preserves all records and papers belonging to the Executive Department; performs the clerical duties of the department; and renders to the Governor, in the dispatch of the business of that department, such service as he may require. He performs a number of other duties imposed upon him by law: among them he superintends the public printing; controls the distribution and sale of the laws of the State and the reports of the Supreme Court of Appeals; issues certificates of incorporation under general laws; and acts as

secretary to the Board of Public Works. The office has become important; and by reason of a gradual accummulation of business transacted in the office the fees thereof have become enormous, all of which accrue to the Secretary.

(2) **Powers and Duties as Keeper of the Seals.**—The use of seals for proving or authenticating public documents and state papers is of great antiquity. Their use for both public and private purposes comes to us as a part of the English law which we have adopted. The kings of England had their Great Seal and Privy Seal for authenticating the solemn acts of the State. The United States and all the States and Territories have their official seals, most of which are artistic and beautiful in design. It is not enough that a document of State should bear the *signature* of the Chief Magistrate or the officer in charge of the department: it must also carry the *seal* of the office itself.

When West Virginia was organized, the State had no seal. On the third day of the first session of the Legislature a committee was appointed to report "suitable devices and inscriptions for the seals of the State;" and in the meantime the Governor was authorized to use his private seal upon all state papers requiring a seal. The original designs were executed for the committee by Mr. J. H. Diss Debar, a Swiss by birth, who was afterwads Commissioner of Immigration for the State. The description of the seals contained in the report of the committee is as follows:

(a) **The Great Seal.**—The disc of the Great Seal to be two and one-half inches in diameter. The obverse to bear the legend, "State of West Virginia," the Constitutional designation of our State, which, with the motto, "*Montani Semper Liberi,*" (Mountaineers are always free) is to be inserted in the circumference. In the center a rock with ivy, emblematic of stability and continuance, and on the face of the rock the inscription, "June 20, 1863," the date of our foundation, as

if graved with a pen of iron in the rock forever. On the right of the rock a farmer clothed in the traditional hunting shirt, peculiar to this region, his right arm resting on the plow handles, and his left supporting a woodman's axe, indicating that while our territory is partly cultivated, it is still in process of being cleared of the original forest. At his right hand a sheaf of wheat and a cornstalk; on the left of the rock a miner, indicated by a pickax on his shoulder, with barrels and lumps of mineral at his feet. On his left an anvil, partly seen, on which rests a sledgehammer, typical of the mechanic arts, the whole indicating the principal pursuits and resources of the State. In front of the rock and the figures, as if just laid down by the latter and ready to be resumed at a moment's notice, two hunters' rifles crossed, and surmounted at the place of contact by the Phrygian cap, or cap of liberty, indicating that our freedom and liberty were won and will be maintained by the force of arms.

(b) **The Less Seal.**—The above to be also the legend, motto, and devices of the Less Seal, the disc of which should have a diameter of an inch and a half.

(c) **The Reverse Side of the Great Seal.**—The reverse of the Great Seal to be encircled by a wreath composed of laurel and oak leaves, emblematic of valor and strength, with fruits and cereals, productions of our State. For device a landscape. In the distance on the left of the disc, a wooded mountain, and on the right a cultivated slope with the log farmhouse peculiar to this region. On the side of the mountain a representation of the viaduct on the line of the Baltimore and Ohio Railroad, in Preston County, one of the great engineering triumphs of the age, with a train of cars about to pass over it. Near the center a factory, in front of which is a river with boats; on the bank and to the right of it nearer the foreground, a derrick and shed, appertaining to the production of salt and petroleum. In the foreground a meadow with cattle and sheep feeding and reposing, the whole indicating the leading char-

acteristics, productions, and pursuits of the State at this time. Above the mountains the sun emerging from the clouds, indicating that former obstacles to our prosperity are now disappearing. In the rays of the sun the motto, *Libertas et Fidelitate*, (Freedom and Loyalty) indicating that our liberty and independence are the results of faithfulness to the Declaration of Independence and the National Constitution.

The seals are kept in the office of the Secretary of State, who is made the Keeper of the Seals, to be used by him officially as directed by law. The Less Seal is used on all documents of a local character, which require a seal, such as military and civil commissions. The great seal is used on documents passing between the State and another State, the United States, and any foreign State. It is also used to authenticate proclamations of the Governor, credentials of members of Congress, charters of corporations, etc. But it is a somewhat surprising fact that the State has never passed a general statute regulating the use of the seals. In a few instances the law specifically requires its use. In all other cases the Common Law determines its use.

7. **The State Superintendent of Free Schools.**—Both Constitutions adopted by West Virginia firmly declare that the Legislature shall provide, by general law, a thorough and efficient system of free schools. A State Superintendent of Free Schools is provided for, who has general supervision of free schools, and performs such duties in relation thereto as the law requires. He is charged with the supervision of all county superintendents, and with carrying the school system into effect; and to this end his powers are both numerous and extensive. It is made his duty to aim at perfecting the system of free schools. He is required to submit annually to the Governor, on or before January first, a report to be transmitted to the Legislature at its next regular session, showing the condition of the free schools in the State, embracing all statistics compiled from the reports of county superintendents,

together with such other information of the working of the system, and plans for its betterment, as he may deem it proper to communicate. He is also a member of the Commission on Public Printing and of the Board of Public Works. As a rule the men who have held the office of State Superintendent of Free Schools, have been able, conscientious, and experienced educators, fully alive to the needs of the State, not mere politicians: progress has been the result.

8. **The Auditor.**—The Auditor performs the duties usually assigned in other States to three distinct officers, namely, (1) Controller of Finances; (2) Register of the Land Office; and (3) Commissioner of Insurance. And now let us look into his duties in each of these spheres of activity.

(1) **Controller of Finances.**—He is the account keeper of the State and is a sort of check upon the office of the Treasurer; he superintends the assessment of property for taxation; enforces the collection of all revenue due the State; instructs, and in a measure controls all the financial officers and agents of the State; examines all claims, accounts and requisitions upon the Treasury, and orders by his warrant on the Treasurer, payment of such as he approves; receives all moneys paid to the State and deposits them with the Treasurer. No money can be paid out of the Treasury, except upon the Auditor's warrant. He is the only officer in the State who has anything like control over subordinate officers. On his complaint the county courts may remove assessors for misconduct or neglect. If a sheriff prove delinquent or incompetent, the Auditor, with the approval of the Governor, may appoint a collector in his place. He furnishes the forms and instructions to revenue officers; may enforce the collection of taxes and other revenue by suit; and exercises the most extensive control and supervision of the finances of the State. His annual report to the Governor must contain a statement of all receipts and disbursements under the proper general heads, showing the balances in the Treasury at the end of the fiscal year and at the

beginning of the next. It must also contain an estimate of the revenue available to meet the expenditures of the current year, with such recommendations as he may think proper to make. The Auditor's reports are full and elaborate on all points touching the finances of the State. He is allowed by the State a chief clerk, land clerk, claim and corporation clerk, sheriff's clerk, insurance clerk, and an accountant.

(2) **Register of the Land Office.**—The basis of a land title in West Virginia is a grant made by the Commonwealth which is called a patent, for all entries made prior to the twentieth day of June, 1863, except a few royal grants made by the Crown before the Revolution. No patents have been issued by the State of West Virginia, except upon entries made prior to June 20, 1863, and then only in those instances where the parties have fully complied with all requirements of the laws of Virginia in force on that day, with respect to such entries, and for which no patent was issued by the Commonwealth of Virginia. All forfeited, waste, and unappropriated lands, all lands sold as delinquent for the non-payment of taxes, which were purchased by the State and were not redeemed, and all lands the title to which has in any manner become vested in the State of West Virginia, are held for the benefit of the permanent and invested school fund; and upon a sale of such lands by the State, deeds therefor (not patents) are made by the Commissioner of School Lands, or by a special commissioner appointed by decree of the court. Patents completing the titles to lands entered under the laws of Virginia prior to June 20, 1863, were issued from the office of the Secretary of State, where they were recorded and indexed, together with the surveys and plats relating to them. But these records have since been transferred to the custody of the Auditor. Under an arrangement with the State of Virginia most of the books, records, documents, and papers, or copies thereof relating to land titles in this State, have been procured from the Register of the Land Office of Virginia, and placed in the cus-

tody of the Auditor. The object of the Legislature has been to make the office of the Auditor the repository of all the land records possessed by the State.

(3) **Commissioner of Insurance.**—The State makes laws to guard its citizens against irresponsible insurance companies. It is no doubt as much the duty of the State to inspect and regulate insurance companies as it is to inspect and regulate banks. The Auditor is the officer charged with the enforcement of all laws relating to the regulation of insurance within the State. No officer of any life, fire, or marine insurance company may write policies of insurance without securing from the Auditor a certificate of authority. Heavy penalties are imposed for violations of the law. The Auditor makes an examination into the reputation and solvency of the company, and, if satisfied that it is reputable and responsible, authorizes, it to do business in the State.

9. **The Treasurer.**—The moneys belonging to the State are kept in such banks as may be designated by the Board of Public Works for the purpose in each Senatorial district; they are called "state depositories." The Treasurer, therefore, does not receive and pay out cash directly. He may be regarded as a sort of state banker, or manager of the banking department of the State's finances. He is allowed at the expense of the State a chief clerk and an assistant. He keeps an account with each depository, and a general account of receipts and disbursements; keeps a separate account of the particular heads or sources of revenue, separate and general accounts with each particular appropriation, and such individual accounts as may be necessary. He is required to balance his accounts at the end of each quarter and to compare them with the balances kept in the Auditor's office. He makes semi-annual reports to the Board of Public Works, and submits to the Governor a biennial report to be transmitted to the Legislature. It may be profitable to note carefully, first, how money

is paid into the Treasury, and secondly, how payments are made out of the Treasury.

(1) **Payment into the Treasury.**—All payments of money are made into the Treasury of West Virginia, as follows: the person desiring to make payment to the State pays his money into any bank designated as a depository, takes a certificate of deposit, forwards it to the Auditor who endorses thereon the account to which it is to be credited and forwards it to the Treasurer. The Treasurer keeps the certificate, charges the account to the proper bank, and delivers to the Auditor a receipt in duplicate. The Auditor endorses on the original that the duplicate has been filed in his office, and then delivers the original to the person making payment, and retains the duplicate in his office. Any one paying money into the Treasury in any other manner does so at his own risk and may be called upon to pay again in addition to incurring a liability for a fine for violating the law requiring payment in the proper manner. The law is strict, because, if it were not, there would soon arise confusion in the accounts of the State.

(2) **Payment out of the Treasury.**—We have seen under the paragraphs in relation the Auditor how that officer controls payments of money out of the State Treasury, and how any person claiming to receive money from the Treasury must apply to the Auditor and receive from him a warrant authorizing the Treasurer to make payment. The Treasurer examines the warrant, and if he finds it correct, endorses his check thereon to some state depository having funds, directing payment to the order of the person entitled thereto. No payment can be lawfully made in any other manner.

10. **The Attorney General.**—The Attorney General, whenever required by the Governor, any one of the executive officers of the State, or the Board of Public Works to do so, must give his opinion and advice in writing, touching any

question of state administration. He appears as counsel for the State in all cases in which the State is interested, depending in the Supreme Court of Appeals, or in the circuit court of Kanawha County, wherein is situated the seat of government. It is his duty to appear in behalf of any authority in this State authorized to levy taxes,—such as county, district, and municipal corporations,—in any action, suit or proceeding by or against any railroad company, which involves the right to assess and collect taxes upon the property of such railroad company, whenever such county, district or municipal corporation may request him to do so. For this service he is entitled to a fee to be paid by the authority requesting his services; but no compensation can be lawfully paid to him out of the State Treasury, except his salary and actual traveling expenses. Every bond required by law to be approved by the Governor must be first submitted to the Attorney General, and if he find it in proper form and legally executed, he shall certify the fact by endorsement on the bond. It is made his duty to take all necessary legal measures to remove any bridge built or which may be built across the Ohio, Great Kanawha, and Big Sandy rivers contrary to law, and to enjoin and prevent the building of any that may be contemplated without a compliance with the requirements of law.

11. **The Militia.**—Government in its last analysis is organized force. It may not always be apparent; it may not always be exerted; it may lie dormant; but it may be used in the last resort. It is just as certainly back of the elected magistrate as it is behind the usurper. The supreme force of the State is embodied in its militia which is divided into two elements, (1) the enrolled, and (2) the organized.

(1) **The Enrolled Militia.**—All able-bodied men between the ages of eighteen and forty-five years, citizens, and residents who have declared their intention to become citizens, are subject to military duty, unless they fall in one of the

lists of exemptions prescribed by law. There are more than 100,000 such persons in the State.

(2) **The Organized Militia.**—The organized militia of the State is called the West Virginia National Guard. It consists of a general staff and one brigade, under the command of a brigadier general who has a brigade staff. The brigade is composed at present of the first and second regiments of infantry, each with a colonel, a lieutenant colonel, and a regimental staff. A regiment has three battalions, each of which is under the command of a major, and is divided into from two to four companies. Each company has a captain, two lieutenants, and a number of sergeants and corporals called noncommissioned officers, and from twenty-eight to eighty-four privates. The law provides for a battery of artillery, a signal corps, and a medical department. The State receives an annual appropriation from the Federal Government to aid in the support of the National Guard, to which is added a legislative appropriation. The National Guard is supplied with uniforms, arms, equipments, and armories, and may be required to do camp duty with pay for ten days in each year.

(3) **The Commander-in-Chief.**—The Governor is the Commander-in-Chief of the military forces of the State, and may call out the same to execute the laws, suppress insurrection, and repel invasion. The Governor appoints a general staff, whose functions except those of the Adjutant General's Department, are chiefly those of a guard of honor on occasions of public ceremony.

(4) **The Adjutant General.**—The Adjutant General is the mouthpiece of the Governor. He is his chief of staff, but issues no order and gives no command except by the authority of the Governor. He ranks as brigadier general, and receives a salary of $1200 a year. He is allowed an assistant, with the rank of colonel, who receives $1000 annually.

(5) **Military Courts.**—There are three grades of military courts for the enforcement of military law in this State: general courts-martial; summary courts; and courts of inquiry. The punishments for military offenses in time of peace are limited to dishonorable dismissal from the service, reprimands, degradation, and fines for the non-payment of which imprisonment may be imposed.

CHAPTER XXXVII.

THE STATE: THE JUDICIAL DEPARTMENT.

1. **The Judicial Power.**—We have seen how the people through their constitution and by their Legislature make and declare the law, and how the executive department "takes care that the laws be faithfully executed," and administers the duties of the executive offices. It now remains for us to point out how the Judicial Department determines the law, interprets its meaning, and applies it to the actions of men and society in particular cases. If the Legislature of West Virginia should pass an act in conflict with the Constitution of the United States or the Constitution of this State it would be invalid. But how is the fact to be determined? Whenever a case is properly brought before a state court involving the constitutionality of any law, or before any federal court, if the Federal Constitution be involved, the court may declare that the act purporting to be a law is null and void. The judiciary determines all questions arising out of the law.

2. **The System of Courts.**—The judicial power of the State of West Virginia is vested in a system of courts consisting of a Supreme Court of Appeals, thirteen circuit courts, certain inferior courts variously called criminal or intermediate courts, county courts, and justices of the peace.

3. **Courts of Record: Courts not of Record.**—A *court of record* is an organized tribunal, with certain inherent attributes, "where acts and proceedings are enrolled .. for a perpetual memorial and testimony." It always has a clerk, and authenticates its acts with a seal. The formal record of

proceedings in a court of record, duly authenticated under the seal of the court, receives "full faith and credit," for the facts therein stated, in every civilized state in the world. But it must not be assumed that every court which keeps a record is a court of record, or that every court not of record keeps no record. Many courts not of record, if nor all of them, keep some sort of a record of their proceedings; but they do not receive the high sanction accorded to acts of courts of record. The law books are not always quite agreed as to what are courts of record; so it is needless for us to go into the question further. The Supreme Court of Appeals, the circuit courts, and the intermediate and criminal courts are courts of record. It is doubtful whether the county courts are such, although each has a clerk, has power to punish for contempt, enters its proceeding of record and keeps a seal. But it has not Common Law jurisdiction; it has no power independent of statutes, and no writ of error lies to correct its proceedings. Justices of of the peace and mayors of towns and cities do not hold courts of record, although each one keeps a record.

4. **Jurisdiction: Kinds of.**—A court must have jurisdiction of a case before it can hear or try it; that is, it must have the legal right to hear and decide it. There are three kinds of jurisdiction.

(1) **Original Jurisdiction.**—A court has original jurisdiction when the suit may be brought there in the first instance. The Supreme Court of Appeals, for illustration, has original jurisdiction in three classes of cases only, *habeas corpus*, *mandamus*, and prohibition. No other kind of a case can be brought there in the first instance.

(2) **Concurrent Jurisdiction.**—When a suit may be brought in any one of two courts, they are said to have concurrent jurisdiction.

(3) **Appellate Jurisdiction.**—When a party to a suit is dissatisfied with the judgment of the court which tries the case,

the law allows him under certain regulations, to take the case to a higher court. The higher court is said to have appellate jurisdiction.

5. **Legal Terms in Common Use.**—It is not possible to describe the judicial system of the State without making frequent use of some legal terms. The law speaks a language peculiarly its own, and substitutes for legal expressions can not often be made without marring the sense or resorting to roundabout statements. In this and in the following six main paragraphs we shall attempt to give some simple definitions of common legal terms, together with an outline of the method of procedure in a court. We shall then be better prepared to understand the courts and their officers.

(1) **Crimes.**—A crime is "an act committed or omitted in violation of a public law forbidding or commanding it," It is a wrong which the State takes proceedings to punish in its own name, and prosecutes through its own attorney. An act may be a crime at the Common Law, or it may be made a crime by a law passed by the Legislature. There are therefore Common Law crimes and statutory crimes. In West Virginia all offenses are grouped into two classes, namely, felonies and misdemeanors.

(a) A felony is an offense punishable by death or confinement in the penitentiary.

(b) All other offenses less than felonies are misdemeanors, and are punished by fine, or by fine and imprisonment in the county jail.

(2) **Torts.**—A tort is a private or civil wrong or injury, independent of contract. The same act may be a crime as well as a tort. To enter upon the lands of another and cut and remove his timber, is a tort; it is also a misdemeanor, if the act was willful and malicious. An assault by one person upon another is a crime, as well as a tort.

(3) **Criminal Actions.**—A criminal action is a proceeding in a court of justice in the name of the State, against one or

more persons charged with a crime. Unless the party accused confesses, the trial of the case must be by a jury.

(4) **Civil Actions.**—A civil action is one that has for its object the recovery of a private or civil right, as the payment of a debt, or the recovery of compensation called damages for a tort. In this kind of action the parties may waive the right to a trial by jury, in which event the judge alone hears and determines the case.

(5) **Suits in Equity.**—A suit in equity, or chancery as it is sometimes called, is a proceeding to determine a large class of rights in accordance with natural justice, for which the law either affords no remedy, or gives an insufficient one. The field of equity is unlimited. It affords relief in all cases where the law fails. Its jurisdiction includes questions arising out of trusts, mortgages, charities, forfeitures, fraud, accident, mistake, administration of estates, wills, partnerships, and many others.

(6) **Writs.**—A writ is a command in writing issued by a court in the name of the State, addressed to the sheriff or some other officer, commanding the officer, or the person named therein, to do, or to refrain from doing, some act specified in the writ. A writ ordering a person to appear in court is called a *summons;* ordering the arrest of a person, a *capias* or *warrant.* The word *subpœna* is still applied to the writ which requires a witness to appear in court, *under penalty.* An *execution* is a writ commanding that a judgment be carried into effect. *Process* is a general term which includes any judicial writ or order, especially writs for bringing defendants into court.

6. **Juries.**—The word *jury* signifies any one of several bodies of persons that may be sworn by the court, or in pursuance of law, for a number of purposes. The origin of juries is lost in the obscurity of the centuries known to history as the "Mid-

dle Ages." We derive the institution immediately from England. We shall notice here only three classes of juries.

(1) **Petit Jury.**—The petit jury is a body of twelve men, selected within the jurisdiction of the court, who are sworn to declare the facts of a case as they are proven from the evidence placed before them. Their province is to determine the truth of the facts in dispute and to assess damages in a civil case, and to determine the guilt or innocence of the person accused in a criminal case. The chief qualification of a juror is that he shall be free from bias of any kind in the case. The panel, or list of persons for jury service, is drawn by lot by the jury commissioners in the presence of the clerk of the circuit court of the county, from a list prepared for the county by the jury commissioners.

(2) **Grand Jury.**—A grand jury is a body of men that meets at each regular session of the court, and oftener if required, and inquires into any violations of the law that may be brought to its attention. They examine such witnesses as the State's attorney may send before them, or such as they themselves may call. The number composing a grand jury varies in the States from twelve to twenty-three. In West Virginia the number is sixteen, fifteen of whom are required for a quorum, and twelve of whom must concur in finding an indictment. One of their number is designated as foreman by the court, and they choose one of their number as secretary; but no records are kept, except for their own convenience, because their proceedings are secret. They hear only the State's witnesses. Grand jurors must be freeholders. They also act as a committee to investigate the condition and management of the county prison. They are drawn in the same manner as petit jurors.

(3) **Coroner's Jury.**—It is the duty of the county court to appoint a coroner from time to time. If the coroner be absent, or unable to act, any justice of the peace may serve in his place. In case of the discovery of a dead human body within

the county, whose death there is good cause to believe came about by some unlawful act, the coroner, upon being notified of the fact, issues his warrant to a constable directing him to summon a jury of six residents of the county. Witnesses may be summoned and examined as to the cause of death, and when the inquest is completed, the jury make their report stating the name of the deceased, the circumstances of his death, and, in case of violence or other unlawful act, the name of the guilty party, if known. Their report is forwarded to the office of the clerk of the circuit court, where it is filed for the information of the prosecuting attorney.

6. **Attorneys-at-Law.**—An attorney at law is an officer of the court, who is authorized to appear in court to enter pleas and prosecute or defend an action or suit for any party interested, either as plaintiff or defendant, according to the rules of practice of the court. The fitness of any person to practice law is settled either by local legislation or by rule of court. In West Virginia the Supreme Court of Appeals is authorized by law to prescribe rules and regulations for admission to the bar, except as to graduates of the Law College of the West Virginia University, who are admitted on their diplomas. The Supreme Court of Appeals requires all other applicants to pass an examination before the professors of law in the University. A license is issued to each applicant who passes a satisfactory examination.

8. **Procedure for the Punishment of a Crime.**—It is proposed to give in this section the briefest outline possible, consistent with clearness, of a criminal proceeding from the complaint to the execution of sentence.

(1) **The Complaint.**—If a crime has been committed, any person may appear before a justice of the peace and make complaint under oath, stating the nature of the crime, when and where committed, and the name of the person believed to be guilty, and requesting that he be arrested and tried.

(2) **The Warrant of Arrest.**—If the justice finds the complaint sufficient to raise the presumption that the person accused is guilty, he issues his warrant for his arrest, directed to a constable or to the sheriff.

(3) **The Search Warrant.**—In case the nature of the crime charged calls for it, as in case of theft, or burglary, a search warrant may be issued, which must "particularly describe the place to be searched, and the person or thing to be seized."

(4) **The Preliminary Examination.**—The officer to whom the warrant is directed arrests the party accused, and makes return of his warrant by endorsing on it the manner in which he executed its commands. The accused has a right to witnesses in his behalf, and to an attorney. The object of the preliminary examination is to determine whether or not there are sufficient grounds for holding the accused for trial in the court. If upon the examination it seems to the justice that the accused is innocent of the crime, be is discharged. But, if his guilt seems probable, he is held to await the action of the grand jury.

(5) **The Recognizance.**—If the offense charged be not punishable with death, the justice may take from the accused bail, which is in the nature of a bond, in a penalty fixed by the justice, called a recognizance, conditioned for the appearance of the accused before the court to answer the finding of the grand jury. The accused may, if he chooses, waive the examination and give the bail-bond, if the offense be bailable. Material witnesses may be required to give bond for their appearance before the grand jury.

(6) **The Commitment.**—If a bail-bond be required in any case and it be not given, the party of whom it is required may be committed to jail for safe keeping until the action by the grand jury, and the further order of the court. Security is always demanded of one charged with a crime or misdemeanor; but witnesses are often put upon their own recogni-

zance for their appearance before the court. The bonds taken and report of proceedings had, by the justice, are filed with the clerk of the court before which the parties recognized are required to appear.

(7) **The Indictment.**—An indictment is the formal written accusation of a crime, against a person charged therewith, found by a grand jury of the county wherein the crime was committed, and presented to the court in which the grand jury was impaneled.

(8) **The Trial.**—If the accused does not confess the crime, but enters a plea of not guilty, a trial takes place before a jury. After the jury have heard the evidence and arguments of counsel, they are sent to their chamber to consult of their verdict. Let us now suppose that their verdict is guilty, for for if it is not guilty the prisoner will be discharged at once and no further proceedings will be had.

(9) **The Conviction.**—If the verdict of guilty be not set aside and a new trial granted, the sentence of the court follows. It may be a simple fine; fine and imprisonment in jail; fine and imprisonment in the penitentiary; imprisonment without fine; or the death penalty, depending upon the degree and nature of the offense.

(10) **The Execution of the Sentence.**—In case of a fine a writ of execution may be issued, or the defendant may be committed to jail until the fine is paid. Execution of a sentence of imprisonment is had by removing the convict to prison. All sentences of death are executed at the penitentiary in the presence of a limited number of witnesses. Public execution of the death penalty was abolished in West Virginia by law in 1899.

9. **Procedure in a Civil Action.**—The procedure in a civil action between two parties may be outlined in brief as follows:

(1) **The Summons.**—A civil action is brought by a plaintiff obtaining from the clerk of the court a writ of summons requiring the defendant to appear on a certain day to enter pleas of defense to the action.

(2) **The Declaration.**—The plaintiff by his attorney files his statement of the case in writing which is called the Declaration.

(3) **The Pleas.**—The defendant appears, by his attorney, and files his statements in answer to the plaintiff's declaration, which are called his *pleas.*

(4) **The Issue.**—Allegations and denials may be made alternately by the plaintiff and defendant, which are called replications, rejoinders, etc., the object of which is to arrive at a single material point in the dispute, which is affirmed on the one side and denied on the other. This point is called the *issue,* and is to be determined by the judge or jury. The issue is always a disputed question of *fact,* for the *law* is determined by the court.

(5) **The Trial by Court or Jury.**—If the parties waive their right to trial by jury, the whole matter of law and fact may be determined by the judge alone. But this does not often happen. When the docket (list of cases to be tried) is called, if the parties are ready for trial, the sheriff is directed by the court to make up a panel of twenty qualified jurors, from which each of the parties may strike off four names, thereby reducing the number to twelve. The jury are then sworn to try the *issue.* The lawyers on each side make an opening statement. The witnesses for the plaintiff are then examined, after which the defendant introduces and examines his witnesses; and then the plaintiff is allowed to examine witnesses again in rebuttal of the defendant's testimony.

(6) **The Arguments of Attorneys.**—When the evidence has been heard, the lawyers make their arguments before the jury. The judge instructs the jury on the points of law bear-

ing on the case. The jury then retires to the jury room to consult of their verdict.

(7) **The Verdict.**—If the jury agree, they return into court with their finding, which is called the *verdict*. If it is for the defendant, the case may be dismissed, or a judgment entered against the plaintiff according to the verdict: if for the plaintiff, and if the verdict be not set aside by the court, the next step is to enter judgment againt the defendant.

(8) **The Judgment.**—Let us assume that the judgment is in favor of the plaintiff for a sum of money, say one thousand dollars. The court then enters an order called a judgment, to the effect that the plaintiff recover from the defendant the sum of one thousand dollars with interest until paid, and the costs. The defendant may take an appeal to a higher court or pay the judgment.

(9) **The Execution.**—In case the defendant neither appeals nor pays the judgment a writ for enforcing the judgment of the court may be issued, called an *execution*, which is directed to the sheriff, requiring him to seize and sell the goods and chattels of the defendant sufficient to satisfy the judgment, interest, and costs.

We have given the simplest outline of procedure. The student must bear in mind that many questions and side issues, not hinted at here, may arise in a case.

10. **Procedure in a Suit in Equity.**—No suit can be maintained in equity, or chancery as it is sometimes called, if any one of the civil actions will afford a sufficient remedy. The procedure in equity differs materially from the procedure at law.

(1) **The Summons.**—The process by which a suit in equity is commenced is called a *summons*. It cites the defendant to appear and answer the bill of complaint filed against him.

(2) **The Bill of Complaint.**—The plaintiff's statement of his case is called a *bill*, or *bill in equity*. It is a full and elab-

orate statement of his wrongs and grievances against the defendant, and concludes with a request, called a *prayer*, for the court to enter a decree giving him the relief asked for.

(3) **The Answer.**—The defendant may file his *answer* to the bill of complaint, which contains a complete statement of his side of the controversy. The plaintiff replies to the answer, and the cause is set for hearing. Usually evidence may be taken at this stage; but not infrequently a decree of the court is necessary to decide some point before the evidence may be taken.

(4) **The Evidence.**—There is no jury in a cause in equity. The evidence is rarely taken before the court. The party proposing to take evidence gives his opponent a notice of the time and place of taking testimony, to which witnesses are summoned. The lawyers and their clients attend for the purpose of questioning the witnesses. The evidence is reduced to writing by a commissioner in chancery, a notary public, or some magistrate authorized by law to take depositions. When the taking of depositions is concluded, the cause is ready to be argued before the court and submitted for a decision.

(5) **Commissioners in Chancery.**—The trial courts may each appoint four commissioners in chancery, who act as assistants to the court. They may not only take and certify depositions, but they may decide such questions as the court may refer to them, subject to revision and correction by the court. At some stage of its career almost every cause in equity is referred to a commissioner in chancery for decision and report upon some question involved.

(6) **The Decree of the Court.**—Thus the equity case, when it comes to the judge for a final decision, is in writing. He may take it and read it at his leisure. When he has fully read the papers in the case, he may bring them into court and announce his formal judgment, called the *decree*, which is then drawn up and entered at length on the record. The decree of

courts of equity may be enforced by execution, or by a further decree for the sale of property in some instances. Imprisonment for contempt may be imposed in some cases for refusal to obey the orders and decrees of courts of equity, particularly in cases of injunction.

11. **The Extraordinary Legal Remedy of Habeas Corpus.**—Little more than a hundred years ago it was customary on the continent of Europe to arrest men and confine them in prison, without giving them any information of the cause of their arrest. Not infrequently men died in prison without ever knowing the cause of their arrest and without having had a trial. But at an early date the privilege of the "great writ of liberty," called the writ of *habeas corpus*, became the right of every Englishman. It is an extraordinary legal remedy for the removal of illegal restraint upon personal liberty, no matter how or by whom imposed. Under United States law the privilege of the writ of *habeas corpus* can not be denied to any one, except in pursuance of an act of Congress, and then only in case of rebellion and invasion when the public safety may require it. In West Virginia the right to the writ can not be denied at any time by State authority. Any one who is detained against his will, or imprisoned, may file with the circuit court, or the Supreme Court of Appeals, a petition praying for the writ. The court *must* issue the writ commanding the person holding the petitioner in custody to produce his body before the court at a fixed time and place, together with the cause of his detention. The court does not inquire into the question of the guilt or innocence of a prisoner, but merely into the legality of his arrest and detention. If he is lawfully imprisoned or detained, the court will remand him to the custody of his keepers, or admit him to bail; if unlawfully, the court may discharge him. The writ is a guarantee against *illegal* imprisonment or detention against one's will in any form or by any person.

12. **The Courts and Their Officers.**—All judges of courts (in which term justices of the peace and commissioners of the

county court are not included) are elected by popular manhood suffrage, and are commissioned by the Governor. No judge during his term of office can practice law, or hold any other office, appointment, or public trust; and he is ineligible to any political office during his continuance in the office of judge. Judges may be removed from office by a vote of two-thirds of each House of the Legislature, when from age, disease, mental or bodily infirmity, or intemperance, they are incapable of discharging the duties of their office. They may be impeached for misconduct, high crimes, and misdemeanors, and, if convicted, may be removed from office and disqualified to hold any office of honor, trust, or profit, under the State; and in addition may be liable to indictment and the penalties prescribed by law for the offense. In any proceeding to remove or impeach a judge he has a right to be heard in his own defense. Judges must have attained the age of thirty years, must have been citizens of the State for five years preceding their election, and, in the case of circuit judges, must reside in their circuit. A vacancy in the office of any judge may be filled by appointment of the Governor until the next general election, except that when the unexpired term is less than two years, the appointment shall be for the remainder of the term.

(1) Justices of the Peace.—The voters of each magisterial district with a population not exceeding 1200, elect one justice of the peace for the term of four years; and, if the population exceeds 1200, two justices are elected. The office is of ancient English origin, and comes to us as a part of the Common Law, which regards him primarily as a criminal magistrate. But with us he is a civil as well as a criminal magistrate. His jurisdiction and powers are fixed by law and extend throughout his county. His powers and duties are numerous, and the act defining them is practically a little code of itself. His civil jurisdiction is limited to a class of cases involving sums not greater than $300, exclusive of

interest; and, if the sum involved exceeds twenty dollars, any party to the suit may demand a trial by a jury of six. But the jury trial before a justice has not proved popular in practice and is not often used. As a conservator of the peace a justice may require a peace bond of any refractory character who threatens the peace and quiet of a community, and may cause an offender to be arrested and required to enter into a bond to answer an indictment by the next grand jury. He has power to punish offenders by fine and imprisonment in a number of petty cases. He takes acknowledgment of deeds and other writings; takes and certifies depositions of witnesses; and acts as a coroner when no regular coroner is present. His court is not a court of record; but he is required by law to keep a book called a "docket" in which he enters all his judicial proceedings. Appeals may be taken from his judgment to the circuit court, when the amount involved in any case exceeds fifteen dollars. He may be removed from office by the county court for official misconduct, incompetence, neglect of duty, or gross immorality. He is subject to indictment under the Constitution for malfeasance, misfeasance, or neglect of his official duties; and upon conviction his office becomes vacant. A vacancy in his office is filled by appointment of the county court. His fees are fixed by law.

(2) **Constables.**—The voters of each magisterial district elect as many constables as justices, at the same time and for the same term. They are conservators of the peace throughout their counties. They act as the executive officers of the justices. By appointment of the county court they may act in some instances in place of the sheriff. They may be removed from office, and vacancies in their office filled, in the same manner as a justice of the peace. Their fees are fixed by law.

(3) **The County Courts.**—The organization of the county court has been already discussed and its powers of a judicial nature pointed out (Part II, ch. 26). It may be noted here that its judicial powers are limited to those specified in the

Constitution, and the Legislature has no power to confer any other authority of a judicial nature upon it. The modern county court has ceased to be a court for the trial of causes; and the record of all acts, suits and proceedings, formerly therein, are to be found in the office of the clerk of the circuit court, to which they have been transferred in pursuance of law. Appeals lie in some cases from the orders of the county court to the circuit court.

(4) **The Clerks of the County Courts.**—The voters of each county elect a clerk of the county court for the term of six years, whose duties and compensation are prescribed by law. He may be removed from office by the county court upon any one of the grounds specified in Article IV, section 6, of the Constitution, and may be indicted and removed for any offense named in Article IX, section 4, of the same; and any vacancy occurring in the office shall be filled by the county court until the next general election, when a successor shall be elected for the unexpired term. With the consent of the court the clerk may appoint one or more deputies. He keeps the records of the court; he admits deeds and other writings to record; he is the custodian of all records relating to lands; he keeps the registers of marriages, births, and deaths, and performs many duties as county statistician; in the vacation of the court he may admit wills to probate when there is no contest; he is charged with vast responsibilities in matters relating to the holding of elections and the preservation of the ballots; and, finally, he is a sort of *scapegoat*, upon whom the Legislature lays the burden of doing every other duty of a local nature not clearly belonging to some other county officer. He is paid from fees prescribed by law, and receives for his public services an annual allowance fixed by the county court within limits prescribed by law.

(5) **The Circuit Courts.**—For convenience in the transaction of legal business the State is divided into thirteen cir-

cuits, composed of three or more counties each, which are designated by numbers, and are as follows:

I. Brooke, Hancock, Ohio, and Marshall.
II. Monongalia, Marion, and Harrison.
III. Preston, Barbour, Taylor, Tucker, and Randolph.
IV. Wetzel, Tyler, Ritchie, and Doddridge.
V. Wood, Wirt, and Pleasants.
VI. Clay, Gilmer, Jackson, Roane, and Calhoun.
VII. Putnam, Kanawha, and Mason.
VIII. Cabell, Wayne, Lincoln, and Logan.
IX. McDowell, Mercer, Raleigh, Wyoming, and Boone.
X. Greenbrier, Monroe, Summers, Fayette, and Pocahontas.
XI. Upshur, Lewis, Braxton, Nicholas, and Webster.
XII. Grant, Hardy, Hampshire, Mineral, and Pendleton.
XIII. Jefferson, Berkeley, and Morgan.

These circuits are arranged in the Constitution, and the Legislature is denied the right to rearrange them or increase or diminish the number thereof, except at a session next preceding a general election of judges. The Legislature of 1895 had the right to change the circuits, but by disagreement failed to do so. No change can be made now until the year 1903 without an amendment to the Constitution.

(6) **The Judges of the Circuit Courts.**—In the year 1896 a general election of judges took place, at which two judges were elected for the first circuit and one in each of the other circuits, for the term of eight years. Their general qualifications have been mentioned. They receive for their services a salary of $1800, and ten cents a mile for mileage. This compensation is fixed as a rigid feature of the Constitution, which can not be changed without an amendment.

(7) **The Clerks of the Circuit Court.**—The voters of each county elect a clerk of the circuit court for the term of six years, whose duties, compensation, and manner of removal are prescribed by law. If a vacancy occurs, the judge of the

court may fill it until the next general election, when a successor must be elected for the unexpired term. His office is kept at the courthouse, or temporarily at any other place fixed by the court, and is subject to an annual visitation by two persons appointed by the court for the purpose of making in inspection and report. The clerk is the custodian of the records of the court, which are open to the inspection of any person. The duties of a clerk of the circuit court are numerous, and are prescribed in detail by the statute law, in the performance of which he may have one or more deputies appointed with the consent of the court. He receives as his compensation the fees of his office and an annual allowance from the county treasury fixed within prescribed limits by the county court of his county.

(8) **Courts of Limited Jurisdiction.**—The folly of making a Constitution so rigid in its provisions that the legislative branch is denied the exercise of its just powers, has been demonstrated in the last two decades. The circuits, as they now exist, were arranged by a constitutional amendment adopted in 1879. Once only in eight years can they be changed. The development of the State and the consequent increase of population and business during the last twenty years have been phenomenal. Some counties, which, only a few years ago, had a few hundred inhabitants and a meagre court docket, have become populous communities embracing large and prosperous towns, with a court docket numbering cases by the hundred. The circuit judges found it impossible to transact the legal business in some of the circuits. There was one remedy: the Legislature still had power to create courts of limited jurisdiction in single counties, with the right of appeal to the circuit court. As a result nine courts of limited jurisdiction have been established in the counties of Cabell, Fayette, Kanawha, Marion, Mercer, McDowell, Ohio, Wayne, and Wood. The judges of these courts receive for their services a salary payable out of the State Treasury. In

Ohio and Wood they receive $1800, and in all other counties $1500. The court in Wayne County was abolished in 1895. Eight judges of limited jurisdiction in as many counties cost the State more than half as much as fourteen circuit judges each of whom has from three to five counties in his circuit. The experiment has been both costly and unsatisfactory. But there seemed to be no other remedy. The clerks of the circuit courts are clerks of the courts of limited jurisdiction.

(9) **The Supreme Court of Appeals.**—The highest court in the State is the Supreme Court of Appeals, which consists of four judges, elected by the voters of the State for the term of twelve years, any three of whom constitute a quorum for the transaction of business. Its original jurisdiction is limited to three classes of cases, namely, *habeas corpus*, *mandamus*, and prohibition. Appeals may be taken to this court from the circuit courts in the cases and in the manner prescribed by law. The court makes rules governing the matter of appeals, which have the force of law until changed by the court or by the Legislature. In the matter of making rules for the transaction of business, the court, in common with all courts of record, possesses a certain power of legislation. The decisions of this court, when concurred in by at least three judges, are final and conclusive, and are binding authority upon all inferior courts, as to any question arising under state law; but, if a federal question is raised, the cause may be taken on appeal to one of the courts of the United States, if it comes within the proper class of cases. The records of cases coming up from the circuit courts to the Supreme Court of Appeals must be printed. Every point fairly arising upon the record of a case must be decided, and the reasons therefor stated in writing and preserved in the record. These opinions are published from time to time, by the Attorney-General, who is *ex-officio* reporter of the court in a series of volumes called the "West Virginia Reports." The court holds three regular

sessions every year; one at Charleston; one at Wheeling; and one at Charles Town. Special sessions may be held by order of the court. The four judges are an insufficient number to transact the appellate business of the State. The number was thought too small thirty years ago. They cannot give that mature consideration to cases which the rights and interests of litigants demand.

(10) **The Judges of the Supreme Court of Appeals.**—The judges of the Supreme Court of appeals receive for their services the annual salary of $2200, and ten cents a mile as mileage. The maturity of age and the long term of twelve years, have done much to insure the "integrity, wisdom, and sound legal knowledge" of the supreme judiciary; but the meagre salary paid, as compared with the salaries paid in other States, has had the effect of depriving the people of the services of some of their most eminent jurists.

(11) **The Officers of the Supreme Court.**—The Supreme Court of Appeals designates one of its number, usually the oldest member in point of service, as president. In the absence of the president any other member designated by the judges present may act as president. The court appoints its own officers as follows:

A *Clerk*, who takes care of and preserves, in an office kept for the purpose, all the papers and records of the court, and who performs such other duties as may be required of him by the court. He receives a salary of $1,000 and fees.

A *Crier*, who attends the sessions of the court at the place for which he is appointed, keeps order in the court, and is under its orders and directions. He receives the sum of four dollars a day out of the State Treasury.

A *Messenger*, who performs such services as the court may direct, for which he receives an allowance of three dollars a day out of the State Treasury.

13. **Notaries Public.**—A notary, or notary public is an officer of the law appointed in this State by the Governor,

during good behavior. As a rule the official acts of a notary public must be authenticated by seal as well as by signature. It is an ancient office. The duties are prescribed by statute and differ somewhat in the different States. In West Virginia a notary may take affidavits and depositions, administer any oath, and take acknowledgment of deeds and other writings; and his certificate of the fact attested by his signature will be received in the State without his seal. He may protest bills of exchange and other negotiable instruments for non-payment, and may authenticate and certify copies of documents. The official acts of notaries are respected by the custom of merchants and the law of nations. Their protests under seal are received as evidence in the courts of all civilized countries. They receive for their services certain fees which are prescribed by law.

14. **Acknowledgment of Deeds, Etc.: Commissioners and Other Officers.**—The Governor may appoint in any State, Territory, or District, as many commissioners as he chooses for the term of four years, who take and certify oaths, affidavits, depositions, and acknowledgments of deeds and other writings. Every certificate of such commissioner must be authenticated by his signature and official seal. A list of these commissioners is published in each volume of the Acts of the Legislature. They receive the same fees as a notary for similar services. The acknowledgment of a deed or other writing may also be taken and certified by a clerk of any court of record in any country; by a minister plenipotentiary, charge d'affaires, consular officer, or commercial agent, appointed by the Government of the United States to any foreign country; and by any mayor, or chief magistrate, of any municipal corporation in any foreign country.

CHAPTER XXXVIII.

INSTITUTIONS FOR CARRYING ON BUSINESS BY THE STATE.

This chapter is devoted to the institutions in which business is carried on *by* the State, including its schools, reformatories, hospitals, asylums, prisons, etc., as well as the societies which have State relations.

1. **The Normal School.**—Having first established a system of primary free schools, the Legislature, in 1865, authorized Governor Boreman to appoint a commission of five persons to report to the next Legislature a plan for the establishment of one or more normal schools for the training of teachers.

In 1838 Marshall Academy, named in honor of Chief Justice Marshall, was incorporated as a private educational institution, at Huntington in Cabell County. In 1858 it was reincorporated under the name of Marshall College, by which name it is still called. In 1867, by an act of the Legislature, it became the "West Virginia State Normal School." It is under the direction of a board of regents consisting of the State Superintendent of Free Schools, together with six persons appointed by the Governor, who are a corporate body under the name of the "Regents of the State Normal School." It has five branches.

(1) **The Normal School at Fairmont.**—The first school opened in the State for the training of teachers was at Fairmont in Marion County in 1865. In the same year A. B. Fleming and nine others secured a charter for the institution, with the corporate name of the "Regency of the West Virginia Normal School." The following year a bill was offered in the Legislature for the establishment of a State normal school at Fair-

mont. It did not become a law: in the contest for location Huntington won out. The promoters of the school at Fairmont were not discouraged: they purchased a lot and began the construction of a building; they renewed their efforts at the next session to have the institution adopted by the State. Their efforts met with success, but upon consideration that there should be paid into the Treasury of the State $2,000. The condition was fulfilled and the property of the Regency of the West Virginia Normal School was transferred to the Regents of the West Virginia State Normal School. William Ryland White became the first principal.

(2) **The Normal School at West Liberty.**—In 1838 a school was established by Nathan Shotwell at West Liberty, in Ohio County, known as the West Liberty Academy. The title to this property was transferred to the State, and, by an act passed in 1870, a branch of the State Normal School was established at West Liberty.

(3) **The Normal School at Glenville.**—In 1872 the Legislature authorized the establishment of a branch of the State Normal School at Glenville in Gilmer County, upon condition that a suitable building be furnished for the purposes of the school without cost to the State. The condition was fulfilled, and the school was opened in January, 1873.

(4) **The Normal School at Shepherdstown.**—In 1872 the Legislature passed an act establishing a branch of the State Normal School at Shepherdstown on the Potomac in Jefferson County, on the condition that the building, known as Shepherd College, be fitted up for the purposes of the school, and that the title to the lot of land belonging to the college be vested in the State free of charge. The condition was complied with, and the regents soon after met and organized the school by adopting and continuing the work that was already going on under private patronage. Joseph McMurran became the first principal and continued in his work for ten years.

The location is fine, the moral surroundings excellent, the people hospitable, and the school has been a success.

(5) **The Normal School at Concord.**—The location of a branch of the State Normal School at Concord in Mercer County was the result of a contest between the towns of Princeton and Concord for the location of the county seat. The original courthouse at Princeton was burned by order of Colonel Jenifer in 1862. The people of the lower end of the county, who were dissatisfied with the location at Princeton, secured the submission of the question of location to a vote of the people, which resulted in favor of the location of the county seat at Concord Church. The erection of public buildings was commenced; but before they were completed a new election on the question was ordered, which this time resulted in favor af Princeton. The unfinished courthouse reverted to the original owner of the land on which it stood, who proposed to donate it to the State on condition that a branch of the State Normal School should be established at Concord. The owner died leaving a cloudy title to the property. The State agreed to accept a suitable building and other grounds. At the time the village of Concord consisted of only five families; but the building was erected, six acres of land were conveyed to the State, and the regents organized the school by electing Captain James Harvey French, principal. He continued in this position until his death in 1891.

2. **The West Virginia University.**—For nearly a hundred years there has been an institution of higher learning in Morgantown.

In 1814 the Legislature of Virginia passed an act incorporating the Monongalia Academy, and locating it at Morgantown. The first building was a one-story brick structure, divided into two rooms. In 1828 this building was sold and a two-story brick building erected. As a further endowment, the Virginia Legislature passed an act authorizing the trustees of the Academy to raise $20,000 by a lottery, and the draw-

ings for this lottery were conducted January 26, 1832. In later years the Monongalia Academy became an institution of wide reputation, drawing students at one time from fourteen States. For more than fifty years it was the leading school in Virginia west of the mountains.

On July 2, 1862, Congress passed an act donating public lands to the several States to establish "colleges for the benefit of Agriculture and the Mechanic Arts." In 1864 this act was extended to the new State of West Virginia, and in 1867 the West Virginia Agricultural College was founded. The trustees of the Monongalia Academy gave to the State all of the real estate and personal effects of the Academy. The building and grounds of Woodburn Seminary, a school for girls in Morgantown, were also donated, and the new college succeeded the old academy and seminary, inheriting an honorable record and much good will. The estimated value of the property donated was $51,000 The first faculty meeting was held August 30, 1867, and on September 2 of that year the school was formally opened. In 1868 the Legislature changed the name of the institution to "The West Virginia University."

The total number of acres donated to West Virginia was 150,000, which were sold with undue haste and lack of foresight, yielding $90,000. Ten years later the same lands would have yielded an endowment of millions.

The institution is now governed by a bi-partisan board of nine regents, appointed by the Governor for the term of four years each, and divided into two classes, so that the terms of the members of a class will expire every two years. The board is authorized by law to "establish such departments of education in literature, science, art, agriculture, and military tactics, as they may deem expedient." The policy of the State has been to lay the foundations of a real *university*, rather than to maintain a State college, merely. The following departments and schools have been established:

I. The College of Arts and Sciences.
II. The College of Engineering and Mechanic Arts.
III. The College of Law.
IV. The College of Agriculture.
V. The College of Medicine.
VI. The School of Music.
VII. The Department of Pharmacy.
VIII. The Commercial School.
IX. The Preparatory Schools.
X. The Department of Fine Arts.
XI. The Military Department.
XII. The Deparment of Domestic Science.
XIII. The Department of Physical Training.
XIV. The Department of Instruction by Correspondence.
XV. The University Library.
XVI. The Agricultural Experiment Station.

The faculty is composed (1900) of sixty-five members, graduates of the leading Universities of Europe and America.

The Agricultural Experiment Station deserves special mention. It was established in 1887, under the provisions of an act of Congress, passed in that year, known as the "Hatch Act." The object of the law is to aid the States in the establishment of stations to conduct original and scientific investigations and research in matters concerning agriculture, and to disseminate information upon such subjects. A station has been established in each State and Territory, for each of which an annual appropriation of $15,000 is made out of the proceeds of the public lands. Each station is under the ownership and control of the State or Territory wherein it is located, but the Government of the United States exercises a very careful inspection of the institution and of the expenditures of money appropriated to its use. The different stations conduct experiments and investigations along lines peculiarly adapted to the condition and needs of the State in which each is located. The West Virginia station has made its experiments and inves-

tigations chiefly in the following directions: *dairying* in the beginning, but not now carried on; *entomology*, involving investigations of insects beneficial as well as injurious to garden and farm crops, and forest and timber products; *chemistry*, calling for the inspection by analysis of the fertilizers sold in the State, the analysis of waters, minerals, limestones, etc., the analysis and classification of the soils of the State, the analysis of sugar beets, fodders, manures, and foods, as demanded by the experiments conducted by the station, and in many other problems relating to the chemistry of agriculture; *horticulture*, that is, cultural methods, variety tests, studies of remedies for insect and fungus attacks upon fruits; *feeding* and *breeding* poultry, sheep, and swine, and studying their food rations, and the most profitable methods of caring for them. Important experiments are made upon the station farm in plant nutrition, green manuring, testing new varieties of forage, cereals, etc. Many valuable experiments are also conducted in many parts of the State by the station staff, in the treatment of diseases of orchards, and forest and shade trees, both for fungus and insect attacks; in the examination of mineral waters and mineral deposits of the State, which may in any way relate to agriculture; and in determining and testing new varieties of seeds and plants as to their adaptability to West Virginia soil and climate, for example, sugar beets, new varieties of cereals, and forage plants.

As a source of information and advice to the farmers of the State upon many perplexing problems which confront them, the officials of the station have been of great usefulness. When agriculture comes to receive the same degree of scientific training required of lawyers, doctors, engineers, and members of other professions, scientific farming may perhaps be no less attractive and profitable, as an occupation, than the other professions. The instruction in the College of Agriculture in the University, aided by the field work of the station, and the investigations conducted in its laboratories and greenhouses,

offers to the students of agriculture invaluable sources of information and practice.

The Sources of Revenue for the University are the following:

(a) Interest on the Endowment Fund, which has been increased by subsequent donations to the sum of $114.750.

(b) The Morrill Fund, which under act of Congress of August 30, 1890, is appropriated annually, to be "applied only to instruction in agriculture, the mechanic arts, the English language, and the various branches of mathematical, physical, natural, and economic sciences, with special reference to their application in the industries of life, and to the facilities for such instruction." This fund now amounts to $25,000 a year, $20,000 of which goes to the University, and $5,000 to the Colored Institute at Farm in Kanawha County.

(c) The Hatch Fund, amounting to $15,000 annually, appropriated by the Government of the United States for the purposes of the Agricultural Expermiment Station.

(d) Biennial appropriations by the Legislature payable out of the State Treasury.

(e) Fees, tuitions paid only by students from other States, and specific donations and bequests.

A Preparatory Branch of the University was established at Montgomery in Fayette County, in 1895. It is under the control of the board of regents of the University, with the State Superintendent of Free Schools added. The law prescribes that there shall be taught in the school such branches as are taught in the preparatory department of the University and in the Normal Schools. The crying need in our educational system is preparatory schools that will fully fit students to enter the college departments of the University. It is a condition to be regretted that there is not one school in the State, which fully prepares a student to enter the freshman class in the College of Arts and Sciences at the University. Even the preparatory branch at Montgomery is equipped with faculty and apparatus sufficient to do only a part of the work

As high a standard is now demanded for entrance in some branches, as used to be required for graduation.

The first president was Alexander Martin, who resigned in 1875 to accept a professorship in De Pauw University, Indiana. John Rhey Thompson was the second president, serving from 1877 to 1881. William L. Wilson resigned the presidency in 1882 to accept a seat in Congress. No president was elected until 1885, when Eli Marsh Turner was chosen, and served until 1893. During his administration the departments of civil engineering, mechanical engineering, and agriculture were added, and the number of buildings was doubled. Co-education was established in 1889. The next president was John L. Goodknight, who severed his connection in 1897 and was succeeded by Jerome Hall Raymond, during whose administration many new departments and features were added, the teaching force increased, new buildings provided for, the courses of study enlarged, and the standard of scholarship raised. The present head of the institution is Daniel B. Purinton.

The membership of the board of regents, as a rule, from the foundation of the institution, has been composed of prominent citizens of the state; and to their progressive policy, in a large degree, has been due the success achieved by the University. The Legislature has been fairly liberal in its appropriations; but prior to 1899 the United States had contributed annually, since 1893, more than half of the income.

The presidents of the Board of Regents have been William E. Stevenson, afterwards Governor; Judge Joseph T. Hoke, now United States Consul at Windsor, Nova Scotia; Dr. Thomas H. Logan; Colonel Daniel D. Johnson; Colonel John A. Robinson; and Honorable George C. Sturgiss, who is now (1900) president.

3. **The Colored Institute at Farm.**—Under the act of Congress appropriating the Morrill Fund, no State could obtain

the benefit thereof, which did not provide facilities for the instruction of colored students in the same branches specified in the act, making an equitable division of the appropriation in the case of separate institutions. The West Virginia University was the beneficiary of the sum appropriated, but no provision had been made for the education of colored students in these branches. An act was therefore passed at the session of 1891 establishing "The West Virginia Colored Institute" at Farm in Kanawha County, and providing for the purchase of a farm and the construction of buildings. The school was opened in May, 1892. New buildings have been erected from time to time, and the facilities for instruction enlarged. The institution receives practically one-fifth of the Morrill Fund, amounting now to $5,000 annually, and biennial appropriations from the State Treasury. The control of the Institute is in the hands of a bi-partisan board of seven regents. The school is progressive and is doing good work; and has achieved as much success as its most ardent promoters anticipated. The faculty is composed entirely of well educated colored teachers.

4. **The Bluefield Colored Institute.**—"White and colored persons shall not be taught in the same school" in West Virginia; but the Legislature liberally provides for the education of the black population. In 1895 there was established, at Bluefield, in Mercer County, the "Bluefield Colored Institute," for the teaching of such branches as are taught in the West Virginia University and in the Normal Schools of the State. The government and control of the school are in the hands of a board of regents composed of the State Superintendent and five other persons, not more than four of whom may belong to the same political party.

5. **The Schools for the Deaf and the Blind.**—Prior to the formation of West Virginia the institution at Staunton, in Virginia, had afforded facilities for the education of the deaf and

the blind children of the State. After the organization of the new State their education was provided at the institutions of the sister States, Virginia and Ohio, until 1870, when the Legislature authorized the establishment of a school in this State. The location of the institution was offered to the city or town making the most liberal donations. The Romney Classical Institute, at Romney in Hampshire County, was offered to the State. The offer was accepted, embracing fifteen acres of land, and the school was opened September 29, 1870. The buildings were soon found inadequate to the needs of the school; the Legislature responded with liberal appropriations; still the school grew in importance and efficiency, and other buildings have been added from time to time. The administration is in the hands of a board of nine regents appointed by the Governor. All the deaf and dumb, and the blind, youth of the State, between the ages of eight and twenty-five, are educated here at the expense of the State; and others may be admitted under regulations ordered by the board of regents. The building stands in the form of the letter H. The boys occupy the north wing and the girls the south. The style of architecture is Romanesque. There are hospitals, dormitories, sittingrooms, storerooms, bakery, boiler-room, kitchen, etc. The State has not failed to recognize the binding obligation imposed upon her by the laws of nature.

6. **The Reform School.**—In 1889 the Legislature passed an act establishing an institution called "The West Virginia Reform School," which was located by a commission of five at Pruntytown in Taylor County. Pruntytown was the old county seat; and the courthouse and grounds were donated by Taylor County, and $5,000 in cash was contributed by citizens of the county. The school is designed as a reformatory rather than a penal institution, for male minors under sixteen years of age. Boys may be committed to its care in one of the four following methods:

(a) Upon Complaint of incorrigable or vicious conduct on the part of the minor, made by his parents, guardian, or next

friend. If it appears by proof that the minor is beyond control, and that it is requisite for his morals and future welfare and the peace and order of society, any justice of the peace may make an order committing him the school.

(b) Upon complaint made by any one, supported by proof, that a minor is a proper subject for the reform school by reason of vagrancy, or of incorrigible or vicious conduct, and that from moral depravity or otherwise his parent or guardian is incapable or unwilling to exercise proper care and discipline, any justice hearing the complaint and proof may make an order of commitment.

(c) Upon agreement or contract, made between any parent, guardian, or next friend of any minor, and the board of directors, for the support and maintenance of such minor therein for temporary restraint and discipline, he may be received.

(d) Whenever any male minor under the age of sixteen shall be convicted in any court in this State of a felony or misdemeanor, the judge, in his discretion, may order him removed to the reform school, instead of sentencing him to imprisonment in the penitentiary or county jail, until such minor reforms, or until he arrives at the age of twenty-one years, or is sooner discharged, or bound out as an apprentice, by the board of directors. The school is under the administrative control of a board of seven members appointed by the Governor, not more than five of whom may belong to the same political party.

7. **The Industrial Home for Girls.**—"The West Virginia Industrial Home for Girls" was established in 1897 at Salem in Harrison County. It occupies substantially the same relation toward the girls of the State that the reform school occupies toward the boys. Girls from seven to eighteen years of age may be received, when committed by any justice, court, parent, or guardian in any one of the four methods prescribed

for committing boys to the reform school. It has the additional object of saving young girls from a life of social sin, by educating them and training them for occupations whereby they may obtain an honorable and honest livelihood. The board of directors consists of three classes, with one man and one woman in each class, arranged so that one class is appointed every two years for the term of six years. The board is a corporate body with power to make such by-laws, ordinances, and regulations, not contrary to law, for the government and management of the institution, as it may deem proper. The immediate control is in the hands of women alone. The Home is situated on high ground just above the little town of Salem, and occupies a tract of land embracing fifty acres, under a high degree of cultivation, situated in a beautiful landscape adorned by green, rich hills. Thirty-five girls found a refuge there before the institution was a year old. It starts on its career with every prospect of accomplishing a noble work. It is a monument to the persistent, patient, and tireless philanthrophy of Dr. Harriet B. Jones of Wheeling, who labored long and patiently for the passage of the bill.

8. **The Penitentiary.**—Prior to 1866 the convicts of the State were kept in the jail of Ohio County, which had been authorized by law as the principal prison for convicts. Governor Boreman had been urging upon the Legislature, in every message, the importance of the construction of a penitentiary. The jail was insufficient in capacity; there was no room for working convicts; and jail breakings were frequent, as many as nine convicts having escaped in one year, none of whom was recaptured. In 1866 a bill was brought in providing for the location and construction of a penitentiary. Moundsville in Marshall County was chosen as the place, and the Board of Public Works was authorized to select a site of not less than ten acres, and to erect thereon the necessary buildings. Fifty thousand dollars was appropriated for beginning the work.

The labor of convicts was used in the work of construction. The plan selected was modeled after that of the Illinois penitentiary at Joliet. The prevailing style of architecture is castellated Gothic. The estimated first cost was $159,160. The site, valued at $3,000, was donated by the citizens of Moundsville and the vicinity.

9. **The Hospital for the Insane at Weston.**—In 1858 the General Assembly of Virginia passed an act for the establishment of the "Transalleghany Lunatic Asylum." A commission appointed by Governor Wise selected Weston in Lewis County as the site of the institution. A board of nine directors was appointed, whose powers extended to the purchase of land and the erection of buildings. Appropriations aggregating $125,000 for grounds and buildings had been made by Virginia, and the work of construction was begun, when the breaking out of the Civil War caused a temporary suspension of the work. The Reorganized Government of Virginia made provisions for carrying on the work; and the new State of West Virginia completed the original design and has enlarged the institution until the annual appropriations for its support approximate $150,000. The handsome location, the elegant architecture, the beautiful and well-kept grounds, and, on the whole, the able management of the affairs of the institution by a board of directors whose membership has included some of the ablest business men of the State, are features of the chief humanitarian institution of the State, in which the people experience a just sense of pride. In all ages and among all peoples special consideration and indulgence have been shown for the insane. The board of directors is bi-partisan, consisting of nine members appointed for the term of six years each, but divided into three classes, so that one class is appointed every two years. It is a body corporate by the name of the "West Virginia Hospital for the Insane."

10. **The Hospital for the Insane at Spencer.**—The population of the counties included in West Virginia in 1860 was

374,985. In 1890 it was 762,794, more than double. In the meantime the additions made to the hospital at Weston had not been sufficient to afford adequate accommodation for the unfortunates requiring admission. Accordingly, in 1885, the Legislature provided for a commission to report at the next session at least three suitable locations for a second hospital for the insane. Alderson in Monroe County, Mason City in Mason County, Spencer in Roane County, and Charles Town in Jefferson County were reported. Spencer in Roane County was selected as the site, and an appropriation was made for the construction of buildings. This hospital is under the control of a board of directors, consisting of the same number, and appointed in the same manner, as the board of directors for the hospital at Weston. Its corporate name is "Second Hospital for the Insane." It received for its support for the year 1900, $65,750.

11. **The Asylum for Incurables.**—In 1897 "The West Virginia Asylum for Incurables" was established and located at Huntington in Cabell County. The board of directors consists of six members, two of whom may be women. Two classes of persons are admitted as patients to the asylum: first, epileptics, idiots, incurables who need constant care and attendance, and persons not insane or violent, who are incapacitated from earning a support; and, second, all persons named in the first class, who are not charges upon the county nor likely to become such, and who may desire admittance upon payment of the actual cost of their maintainance and treatment. The passage of the act was secured through the untiring effort of Mrs. Mary Jackson Ruffner of Charleston. The asylum was located by a commission consisting of the State Treasurer and one member from each Congressional district. The spacious grounds were donated by the people of Huntington. The location on the foothills overlooking the Ohio is one of the most attractive in the State. The board of directors has wisely laid out, under the supervision of com-

petent architects, an elaborate plan for grounds and buildings, so that the whole may be completed during a series of years, and so that in the end the completed buildings and grounds may represent the symmetry and harmony of one complete design. It is the first time in the history of the State that so much wisdom and foresight have been displayed in the plan of a public institution. It is a guarantee against the *patchwork* that has disfigured so many of the public buildings of the State.

12. **The Geological Survey.**—There was established in 1897 a State Geological and Economic Survey, under the direction of a commission composed of the Governor, the Treasurer, the President of the West Virginia University, the President of the State Board of Agriculture, and the Director of the Agricultural Experiment Station. The commission is required to employ a geologist of established reputation as superintendent, and such assistants and employes as may be deemed necessary. The survey has for its chief objects the following:

An examination of the geology of the State with special reference to economic products; of the soils and their adaptability to crops; of the forest and timber lands, and their preservation from waste; of the physical features of the State and their practical bearing upon the occupations of the people and upon the industrial development and material prosperity of the several sections. It is required to prepare special reports, together with illustrations and maps, showing both in general and in detail, the geology and resources of the State. The commission began its work by appointing Dr. I. C. White as superintendent with the title of State Geologist, and by the selection of assistants and employes. It has published Volume I, of its proceedings, containing the report of the commission, levels above tide, the variations of the magnetic compass and the establishment of true meridian lines in the several counties of the State, and much valuable information relating to the geology of petroleum and natural gas. The

material for a second volume on coals by the State Geologist, with a bibliographic memoir by Professor S. B. Brown, is practically in hand for publication, whenever funds are available. But the Legislature of 1899, by one vote, failed to make an appropriation for continuing the work. No State in the Union has more to gain from a geological and economic survey than West Virginia. The benefits would accrue to all: to the landholder both large and small, in the same proportion; to the merchant, the mechanic, the laborer; to the man with capital, and to the man with no capital, and to the man with no capital more than to the man with capital, because the latter is able to employ experts to gather information for him by which he profits at the expense of the ignorance of the man who can not get this information.

13. **The Miners' Hospitals.**—In 1899 the Legislature established three miners' hospitals, which have been located as follows: No. 1, at Welch in McDowell County; No. 2, at McKendree in Fayette County; and No. 3, at Fairmont in Marion County. Fifteen thousand dollars was appropriated for the purposes of each hospital. Each is under the management of a bi-partisan board consisting of four members appointed for the term of four years. The board may make and publish such rules, regulations, and by-laws, as may be necessay to carry out the provisions of the law creating the hospitals. Any person who has been injured on any railroad while a passenger or employed; and any person "otherwise injured by a railroad train;" and any person injured or hurt in a coal mine or in the coal business, shall be admitted into the hospitals and treated free of charge. Other persons who may be injured or hurt, may be treated in the hospitals at the actual cost of treatment; but preference in admission for treatment must be given to the coal miner, the railroad employe, and the laborer hazardously employed, when injured in and about his employment.

14. **The Historical and Antiquarian Society.**—A society called the West Virginia Historical Society was organized at

the University in Morgantown on September 30, 1869. It held fourteen annual meeting at Morgantown, the last one on June 11, 1884. The by-laws provided for the holding of an annual meeting at the place where the legislature held its sessions. The society included in its membership about one hundred and fifty gentlemen representing all sections of the State. During the early years of its activity it collected many valuable papers and documents, some of which were published in 1871 under the title of "Proceedings of the West Virginia Historical Society, Volume I. Part I." The remainder of these valuable sources remain unpublished. The organization declined, and after the death of its last president, Charles James Faulkner, Senior, ceased to meet. The difficulty in reaching Morgantown before the days of the railroad seems to be the only reason given for the suspension of the work by the society.

On January 30, 1890, the West Virginia Historical and Antiquarian Society was organized at Charleston, and received a charter from the State. It has entrusted its work to an executive board and committees. It has a growing membership. It is to have a permanent home and ample room for its collections in the new Capitol Annex, when completed. With the financial support from the State which the objects of the society merit, it may become a great factor in the educational system of the State. The society has collected some valuable material, but so far it has undertaken no systematic publication of archives or local historical material, outside of a few papers and addresses.

15. **The Humane Society.**—An act passed in 1899 establishes a state corporate board to be known as "The West Virginia Humane Society," for the protection of children and the helpless aged, and for the prevention of cruelty to animals. It is composed of "four reputable citizens," one from each of the Congressional districts, some of whom may be women. It possesses the usual powers pertaining to corporate bodies

necessary to enable it to carry out the purposes of its creation. The chief object of the society is to better the condition of children under fourteen years of age, who are abandoned, neglected, or cruelly treated. It has power to invoke the aid of the courts in the enforcement of its lawful acts. The enactment of this law was secured through the personal influence of Mrs. John K. List of Wheeling.

CHAPTER XXXIX.

INSPECTION AND REGULATION OF BUSINESS IN THE STATE.

In the last chapter we discussed those institutions whereby the State carries on certain lines of public business, including the schools, reformatories, hospitals, asylums, prisons, etc., and the societies which have state relations. In this we propose to treat of the inspection and regulation of certain other lines of business by the State in which the public welfare is deeply concerned, carried on *in* the State by individuals, boards, or corporations.

1. **Agriculture.**—In 1891 the legislative committee of the State Grange prepared a bill, which was passed by the Legislature, creating the "State Board of Agriculture," consisting of seven commissioners, by-partisan in character, practical farmers, and serving for the term of four years The members of the board receive from the State four dollars a day and actual traveling expenses in attending the meetings of the board. The board may appoint a secretary, who receives a salary not exceeding $1000, and traveling expenses. It is the duty of the board to devise means of advancing the agricultural interests of the State, and to promote the holding of farmers' institutes and other agricultural organizations. It publishes a monthly journal called the "Farm Reporter," and has charge of the publication of other literature relating to agriculture. The scope of its work is broad. In conjunction with the Agricultural Experiment Station it has done much work in behalf of the agriculture of the State, which deserves

more liberal recognition of a financial character than it has heretofore received.

2. **Banking.**—All banks organized under charters from the State are subject to the jurisdiction and control of the Board of Public Works. The Governor annually appoints an officer called the State Bank Examiner, who is authorized by law to make a full and minute examination into the condition and affairs of all state banks, after the same manner in which the United States bank examiners inspect the national banks. The office has existed since 1891. The state examination of banks has been somewhat tenderly made; it does not measure up to the searching investigations conducted by national bank examiners. Perhaps in time the State will carry into effect the most rigid inquiry into the condition of all financial institutions authorized by it to carry on business in the State. The examiner submits a general annual report to the Auditor, and special reports to the Board of Public Works in a case of insolvency or unsound condition. He receives an annual salary of $700, and a fee of fifteen dollars paid by each bank examined.

Dentistry.—The law provides for a Board of Dental Examiners, consisting of five practicing dentists, appointed by the Governor for the term of four years. Every applicant desiring to practice dentistry in this State must pass an examination before the board, and receive from it a certificate of registration, for which a fee of two dollars for the certificate and a fee of ten dollars for the examination are charged. The law is deficient in some respects. This board is not required to do so, and has never voluntarily made any report to any central authority for the information of the public. The power of the State seems merely to have been lent to the profession to regulate the licensing of practioners by those already in practice, without rendering to the State any report of the acts of the board.

4. **Education: State Board of Examiners.**—A State Board of Examiners consists of four persons, one from each Congressional district, appointed by the State Superintendent of Free Schools for the term of four years. This board is required to meet at two different places, at least, in each Congressional district, in each year, for the purpose of holding examinations of appicants for state teachers' certificates. Two grades of certificates may be issued: first class certificates for twelve years, and second class certificates for six years. Each applicant pays a fee of five dollars; and the examiners receive five dollars a day for each day necessarily spent in conducting the examinations, including one day for consultation, and six cents a mile for traveling expenses, provided the fees received amount to so much. All certificates granted must be signed by the State Superintendent of Free Schools. The holder of a certificate is exempt from examination, during the life of the certificate, as a teacher in any primary free school of the State.

5. **Game and Fish.**—It is a matter of regret that the game of field and forest, and the fish of the streams, like the forests of the hills, mountains, and valleys, have been subjected to wanton destruction. Not until 1897 was an act passed providing for a game and fish warden in the State. He is appointed by the Governor for the term of four years, and may receives for his compensation the fines accruing from prosecutions to the amount of $1200 per year, and mileage, and, in addition, twenty per centum of all fines collected in excess of the last named amount; but no part of his salary may be paid out of the State Treasury. It is his duty to enforce the laws of the State for the preservation of fish and game, and for the protection and propagation of birds, game, and fish. To this end the warden is clothed with the most extensive powers of search, seizure, and prosecution. The law provides for local wardens in the counties whose duty it shall be to act in conjunction with the state warden

6. State Board of Health.—The State Board of Health is composed of two physicians appointed from each Congressional district for the term of four years. The board elects its president and secretary from its own membership. It takes cognizance of the interests of the life and health of the inhabitants of the State, and causes to be made sanitary investigation, inquiries, and reports, respecting the causes of diseases and the means of prevention, both among the people and among the stock and domestic animals of the State. It has supervision of the State system of the registration of births, marriages, and deaths, and prescribes the forms for the registration of the vital and mortuary statistics throughout the State. The board of health law is regarded as one of the must efficient of its kind in the United States; but its efficiency is impaired by lack of sufficient financial support. It is a monument to the untiring zeal of the late Dr. James E. Reeves of Wheeling, a man eminent in his profession, whose interest in sanitary science was recognized by his election as president of the American Public Health Association. The powers of the board for the enforcement of the health laws of the State, particularly in stamping out epidemic and contagious diseases, are as nearly unlimited and arbitrary as it is possible for them to be, and still be in harmony with our constitutional limitations on the police power of the State. Upon the nomination of the county court of any county the State Board appoints the local board of health in that county.

Two classes of persons only can regularly practice medicine in this State, namely, (1) those who were entitled to practice when the law was enacted (1881), and (2) such as pass an examination before the State Board and receive a certificate of authority to do so. The members of the board, other than the secretary, receive four dollars a day for each day necessarily employed in the discharge of their duties

The *Registrar of Vital Statistics* is the secretary. It is his duty to make and publish a report of the vital statistics of the

State along with his report as secretary of the board. He receives a salary of $500 as registrar, and the like sum as secretary of the board, with traveling and other necessary expenses incurred in the performance of his duties.

7. **Immigration.**—The Board of Public Works is a sort of immigration bureau for the State. By an act passed in 1871 it is made the duty of this board to settle upon and carry into operation a practical plan for the introduction of sober and industrious immigrants from other States and from Europe, into this State. It is authorized to appoint a commissioner of immigration, clerks, and agents, and to prescribe their duties and fix their salaries. The last report of a commissioner of immigration was made in 1882, by Mr. C. E Lutz, in which he reported that the work of the commissioner was suspended because of the failure of the legislature to make appropriations with which to continue the work.

8. **Insurance.**—Many States exercise a very rigid inspection and regulation of all insurance companies doing business in the State. It has been pointed out that such supervision as is exercised by this State is under the control of the Auditor. Examination and regulation of any business by the State can be made effective only when conducted by men thoroughly trained in that business. The importance of creating a separate department for the inspection and regulation of insurance in the State, under the direction of an expert commissioner, has been strongly urged.

9. **Labor.**—An act of 1889 created the State Bureau of Labor under the superintendence of a commissioner of labor, appointed by the Governor for the term of four years, who receives an annual salary of $1200. He may employ assistants. It is the duty of the Commissioner of Labor to collect, compile and present to the Governor, in annual reports, statistics in detail relating to all the departments of labor and the industrial interests of the State, especially in relation to the financial, social, educational, and sanitary condition of

the laboring classes, and all statistical information that may tend to increase the prosperity of the productive industries of the State. He has authority to visit, inspect, and make report of the factories and workshops of the State and all other places where labor is employed. All state, county, district, and city officers are required to furnish, upon request of the commissioner, all statistical information in their possession relating to labor.

10. **State Library.**—The State maintains a library at the Capitol in Charleston. It is intended primarily as a law library and respository of state publications and documents for the use of the judges of the state and federal courts, the state officers, and members and officers of the Legislature. Other persons may use the library at the place where it is kept, but may not take books or documents away. The librarian is appointed by the Governor, with a salary of $1000 a year, whose term begins and ends with that of the Governor. Before entering upon his duties he is required to give a bond approved by the Governor.

11. **Mining.**—The Governor appoints a chief mine inspector for the State, and one inspector for each of the four mining districts into which the State is divided. They are appointed for the term of four years. The chief receives an annual salary of $1200, and an allowance for expenses not exceeding $300; and the district inspectors each receive $1000 salary and the like amount for expenses as the chief. Each mine inspector must be a citizen of the State, a coal miner of at least six years experience, must have a practical knowledge of mining and ventilating and draining mines; must not be interested, while in office, as owner, operator, agent, stockholder, superintendent, or engineer of any coal mine, and must be of good moral character and temperate habits. The district inspectors are to some extent subordinate to the chief, who may remove them for cause, but who can not appoint to fill a vacancy caused by such removal. They report to the chief, and the

chief reports to the Governor. There is great hazard for those engaged in the mining business. Mine horrors are familiar to the reading public. The object of the law for the inspection of mines is to enforce, as far as the State may be able, the proper ventilation and drainage of mines so as to protect the lives of persons engaged therein.

12. **Pharmacy.**—The compounding of medicines, drugs, and poisons for medicinal use, is a business over which the State extends its regulations and control in the interest of the life and health of the people No person who is not a registered pharmacist, can conduct any pharmacy or other shop for the purpose of retailing, compounding, or dispensing medicines or poisons for medicinal use, unless he employs as his salesman a registered pharmacist. No prescription of a physician may be compounded, or any of the poisons named in a fixed schedule dispensed, except under the supervision of a registered pharmacist, The Board of Public Works appoints four commissioners of pharmacy, one from each Congressional district, for the term of four years each, whose terms are so arranged that one is appointed each year. All pharmacists engaging in the business since the passage of the act in 1880, are required to pass an examination before the commissioners of pharmacy and be registered by them, under regulations prescribed by law.

13. **The Board of Public Works.**—The Governor, Auditor, Treasurer, Superintendent of Free Schools, and Attorney-General are a corporation under the style of "The Board of Public Works." The Secretary of State is the secretary of the board. He keeps the records of the official acts, and discharges such other duties as may be prescribed by the board. The members receive no extra compensation for their services. Its duties are to care for the interest of the State, however that interest may be derived, in all works of internal improvement in the State. The Cumberland Road, or old National Pike, so far as it lies within this State, is under the control of

the board. This state became the successor of the rights of Virginia in certain works of internal improvement, and it is to these that the power of the board extends. Under our Constitution the "credit of the State shall not be granted to, or in aid of, any county, city, or township, corporation, or person .. .. nor shall the State ever hereafter become a joint owner or stockholder in any company or association in this State or elsewhere, formed for any purpose whatever. The story of the Virginia debt cannot be repeated in West Virginia in the face of this provision of the Constitution.

But the Board of Public Works has other duties. It designates the banks which shall be the depositories of money belonging to the State; controls such deposits under the regulations prescribed by law; assesses the property of railway companies so far as operated within the State; has supervision over all banks chartered and doing business in the State; appoints commissioners of pharmacy, investigates complaints of non-compliance with the pharmacy act, and brings such violations as seem reasonable to the notice of the proper prosecuting officer; may furnish convicts in the penitentiary to work on public roads; and acts as a State bureau of immigration.

The wisdom of charging the executive officers of the State with duties not pertaining to their offices is open to question and serious objection.

14. **Embalming.**—There is a State Board of Embalmers consisting of two embalmers resident in each congressional district, of at least five years practical experience in their business, appointed by the Governor for the period of four years. All persons engaged in embalming at the time of the passage of the act (1899) were required to register with the board within six months. And no person can engage in embalming since the passage of the act without a license from the board. The board may examine all applicants for license to practice the business of embalming, and if it is found that the appli-

cant is of good moral character, possessed of skill and knowledge in his business, and has a reasonable knowledge of sanitation, preservation of the dead, disinfecting the bodies of deceased persons, the apartments, bedding, and clothing in case of death from an infectious or contagious disease, a license may be issued to him as an embalmer, for which he must pay a fee of twenty-five dollars. The license is registered in the office of the secretary, in the office of the clerk of the county court of the county where his business is to be carried on, and must be displayed in the place of business of the licensee. The secretary receives a salary not exceeding one hundred dollars, and the members of the board two dollars for each meeting of the board attended, together with actual traveling and other necessary expenses, payable from the fees received. The board is required to make an annual report to the Governor.

15. **Vaccine Agencies.**—The Governor is authorized by law to appoint three vaccine agents, one at Charleston, one at Martinsburg, and one at Wheeling, who are required to furnish by mail or otherwise to any citizens of the State who may apply for it, genuine vaccine matter, and directions how to use it, free of charge. An allowance of fifty dollars annually is made to each agent to cover the expense. The Superintendent of the Hospital for the Insane at Weston is also required to act without compensation.

PART III.—THE UNITED STATES.

"To create a Nation while preserving the States was the main reason for the grant of powers which the National Government received; an all-sufficient reason, and one which holds good to-day."—BRYCE.

"The Federal and state governments are in fact but different agents and trustees of the People, constituted with different powers, and designated for different purposes."—MADISON.

"The States have their *status* in the Union, and they have no other legal *status*. .. .. .. The Union is older than any of the States, and in fact, it created them as States. .. .. Not one of them ever had a state constitution independent of the Union."—LINCOLN.

PART III.—THE UNITED STATES.

CHAPTER XL.

ORIGIN OF THE UNION.

1. **Genesis of the Idea of Union.**—The United States as a nation was not born in a day. The idea of union among the colonies was of slow growth. Nearly a hundred and fifty years elapsed from the organization of the New England Confederation in 1643, which was the first realization of a colonial union, until the adoption of the Federal Constitution in 1789. During this century and a half no fewer than twenty plans, suggesting some sort of union or common action among some of the colonies or all of them, were proposed. Common dangers forced union. Indian wars led to the New England Confederation; the massacre at Schenectady in 1690 prompted concert of action between New England, New York, Maryland, and Virginia; the approach of the French and Indian war, with its menaces and dangers, led to the Albany Congress (1754) at which Franklin proposed his celebrated plan of Union, which was rejected by the Crown as well as by the colonies, but for very different reasons: by the Crown, because it was too democratic; and by the colonies, because it was too monarchical. The Revolution brought a Stamp Act Congress, Provincial Congresses, Continental Congresses, a Confederation, and, finally, the Convention which framed the Federal Constitution. The Union was conceived in the minds of the

people; it had to mature there; its birth was attended with the labor of Revolution; it had to be nurtured through infancy; its youth was attended with weakness and vacillation: but it stands forth to-day in the full vigor of manhood, and gives evidence of no signs of decay. It was a union born of necessity, not of deliberate choice.

2. **The Continental Congress.**—A meeting of delegates called for the purposes of consultation upon the grievances of which the colonies complained, did not dissolve, but gradually ripened into that remarkable body known to history as the Continental Congress. For nearly fifteen years it in fact exercised federal powers. It exercised legislative authority blended with imperfect executive and judicial powers, assessed revenue, raised and equipped armies and a navy, contracted a common debt, waged war, negotiated peace, and made treaties and alliances. The national identity of the union of the colonies was recognized among nations. Whence did this Continental Congress get its sanction? It was a sort of usurping assembly, but it had its sanction in the will of the "good people of these colonies," prompted by sentiments of patriotism and a sense of common danger, pricked by the goad of necessity.

3. **The Declaration of Independence.**—Until the moment of the adoption of the Declaration of Independence the colonies recognized their dependence on Great Britian. On the fourth day of July, 1776, the United Colonies became free and independent States (independent of one another); and on the same day resolutions were brought forward for the formation of a confederation. The all important question now is, What was done? It would be idle to say that the delegates of these colonies consciously and deliberately formed a nation at this time. They were meeting an emergency, a condition, not consciously working out a theory. But what were the legal consequences of their acts, viewed from the standpoint of the present? They perhaps did not know; did not stop to think;

did not pause to consider what were the legal consequences of their acts. But in the light of the interpretation put upon their acts in subsequent years, it has come to be recognized that the Union and the States sprang into existence at the same moment as correlative forces Even before the Declaration of Independence (May 15, 1776), the Continental Congress assumed the power of making a recommendation, which was acted upon by the colonies, that "the respective assemblies and conventions of the United Colonies, where no government sufficient to the exigencies of the affairs hath been hitherto established, do adopt such a government as shall in the opinion of the representatives of the people best conduce to the happiness and safety of their constituents in particular, and of America in general." The Union was weak; its powers were vague and undefined; but it was Union, nevertheless. It was too young to be sacred. It was perfectly natural that the idea of the local independence and integrity of the State should be stronger than the idea of Union. The wall and the mortar were there; but the mortar was green; it had not yet set; it became a concrete in later years by the forces of interpretation, usage, and construction. "To us at the present day," says Mr. Woodrow Wilson, "it seems that the Constitution formed in 1787 gave birth in 1789 to a national government such as that which now constitutes an idestructible bond of union for the States; but the men of that time would certainly have laughed at any such idea,—and for the English race .. .. .. every law is what those who administer it think that it is."

4. **The Articles of Confederation.**—The Articles of Confederation brought forward in the Continental Congress in 1775 by Franklin were not acted on. But Richard Henry Lee of Virginia coupled a resolution for the formation of Articles of Confederation with his resolution for independence, as if the purpose was that the declaration and frame of government should form one instrument of government after the model

just adopted in Virginia. A "grand committee" with John Dickinson of Pennsylvania as chairman, reported the plan in the following July; but Congress did not adopt it until 1777, and it was not ratified in all the States until 1881. It was the first effort to underpin the Union, already existing by common consent, with a foundation of distinct written law. The result was disappointing. "The grinding cares of war exhausted it; peace soon brought it to the ground." There was no executive; Congress was impotent, lacking the indispensable sanction of force; there was no central judiciary; it was merely a confederation and perpetual union—a firm league of friendship. There was a distrust of power; crude theories prevailed; the States were reluctant to consent to a subtraction of any of their powers, and the addition thereof to the general government, which they could not revoke. It was the critical period of preparation; the awakening came; the impotence of Congress was recognized and deplored; the demoralizing influence of corruption was felt; public confidence was shaken by the agitation for the repudiation of debts; discontent was fermenting into civil war; "there were," said Washington, "combustibles in every State to which a spark might set fire." The people had at last reached the stage in the process of the evolution of Union in which they recognized the necessity of a better Union. But what was it to be? A discussion of details only brought disagreement.

5. **The Alexandria Convention.**—Maryland exercised jurisdiction over the Potomac River to the southern shore, and adopted regulations for the taxation and control of commerce originating within her jurisdiction. This touched Virginia in a tender spot, because the bulk of the commerce originated on the Virginia side. Virginia retaliated by assessing a duty upon all vessels passing between the "capes" at the mouth of Chesapeake Bay, which are within the jurisdiction of Virginia. There were other and many instances of regulations of commerce enacted by the colonies that grievously affected some of

their neighbors. Disputes and controversies followed. Virginia and Maryland appointed commissioners to compromise their differences. They met at Alexandria in 1785, but adjourned to Mount Vernon. They incidentally discussed the whole subject of intercolonial commerce, and ended by making a report suggesting the appointment of a commission to consider commercial regulations for all the States interested in the navigation of the waters of the Chesapeake. Maryland accepted the recommendation, but Virginia went a step further and proposed that commissioners from all the States be appointed to consider the trade and commerce of all the States.

6. **The Annapolis Convention (1786).**—The place of meeting was Annapolis, Maryland. At the appointed time delegates from only five States had assembled, but others were on their way. Without waiting for the others the delegates present, recognizing that the regulation of interstate commerce is a fundamental sovereign power, adopted a resolution providing for a Convention to amend the Articles of Confederation, to meet in Philadelphia in May, 1787. The commerce question was only one of a number of the organic weaknesses of the Confederation. It had been found useless, time and again, to attempt amendment by piecemeal. But two conditions were necessary to amend the Articles: (1) the assent of the Congress; and (2) confirmation by the Legislature of every State. Six States sanctioned the resolution of the Annapolis Convention by the appointment of delegates to the proposed convention at Philadelphia, and thereby forced Congress, somewhat reluctantly, to approve the plan and to recommend it to the States. All of the States except Rhode Island acted upon the recommendation of Congress and appointed delegates.

7. **The Federal Convention (1787).**—The delegates assembled behind time. It was May 25 before a quorum had arrived. The convention finally adjourned on September 17.

The States with a few exceptions sent up their ablest men, statesmen and soldiers, jurists and scholars. On the morning of the 25 the delegates from seven States convened in the State House and unanimously selected Washington as President of the Convention. By the 28 of the month nine States were represented; the doors were closed to the public; the seal of secrecy was laid by a solemn pledge upon the lips of every member and officer; the injunction of secrecy was never removed and was faithfully observed; and we shall never know exactly what was said and done during the four months on this momentous occasion. Some fragments of the proceedings many years afterward, were discovered and published by Congress. The official journal, which was sealed up and deposited among the secret archives of the government by Washington, when discovered and published, was found to contain a very meager outline of proceedings. Judge Yates of New York took a few hasty notes, but he early withdrew from the Convention in a huff and did not return. Luther Martin of Maryland, who refused to sign and was unfriendly to the Constitution, wrote an open letter to the Legislature of Maryland in opposition to its adoption. But Madison, as if anticipating the historical importance to posterity of some sort of a record, undertook to report, but of course not verbatim, the entire proceedings. His "Notes" were withheld from publication until after his death, when they were published by Congress. Who among this assemblage of fifty-five of America's greatest men, at this time, are most directly responsible for the formation and ratification of the Constitution? Washington, the chief American of all times, who guided the deliberations of the Convention, heads the list; the aged Franklin, who had contributed his great common sense to the conduct of public affairs during thirty years, and whose fame was world-wide while Washington was still a captain under Braddock; Gouverneur Morris, a young lawyer of Pennsylvania, to whom the Constitution mainly owes its terse and simple language; Rufus King of Massachusetts, Roger Sher-

man of Connecticut, and James Madison of Virginia; James Wilson of Pennsylvania, a man of Scotch birth, honor, and sagacity, who finds no rival in that Convention in the science of government, or finds it in Madison alone; Alexander Hamilton, a monarchist at heart, but who nevertheless accepted the work of the Convention, became one of its great exponents, and carried New York for its ratification, upon which the success or failure of the Federal Government depended.*

8. **Submission of the Constitution to Congress.**—The Convention submitted its draft of the Constitution to Congress with the recommendation that it be submitted to a convention of delegates chosen in each State by the people thereof for ratification, and then when ratified by nine states it should go into effect as between the States so ratifying the same. The Congress unanimously approved the recommendation and transmitted it to each State.

9. **Form of Ratification.**—The form of ratification was novel. Neither the people of the whole United States, nor the people of a single State, were to vote directly on the adoption of the Constitution; but a convention was necessary to be chosen in each State by the voters therein, and the delegates to the convention in each State were to decide whether the Constitution should be ratified or rejected. These conventions were not state legislatures or legislative bodies. They were charged with the single duty of ratifying or rejecting the Constitution.

10. **Ratification of the Constitution.**—By May, 1788, Delaware, New Jersey, Pennsylvania, Georgia, Connecticut, Massachusetts, Maryland, and South Carolina had ratified. The friends of the Constitution took the name of Federalist and those opposed, Antifederalists. There was a sharp struggle in Massachusetts, but the Federalists won. One more State was necessary to make nine. Which would it be? A hard

* Gouverneur Morris made 173 speeches in the Convention; Wilson, 168; Madison 161; Sherman, 138; Mason, 136, Gerry, 119. The last two did not sign the Constitution.

struggle was going on in Virginia and New York. Virginia was reckoned about equally divided. The Federalists were led by Madison and Marshall, but opposed to the Constitution were Patrick Henry, George Mason, Richard Henry Lee, and James Monroe. Wythe and Randolph, who had refused to sign the Constitution at Philadelphia, now pronounced for ratification. Jefferson, absent on the French mission, after some hestitation gave it his approval. In New York the opposition was led by Governor Clinton, a capable, trusted, and patriotic man, but narrow in his views of government. When the convention met two-thirds of the membership was reckoned as against the Constitution. Hamilton, Jay, and Livingston led the Federalists. While New York and Virginia were wrangling, New Hampshire's convention met and ratified, making the ninth State. The alert Hamilton soon had a messenger on the way to inform his friends in Virginia. But Virginia was already prepared to vote. Four days after New Hampshire Virginia ratified. New York was wedged in between ratifying States. New Hampshire ratified by a vote of 57 to 46; Virginia, 85 to 79; and New York, 30 to 27. North Carolina refused to ratify, and Rhode Island, which had sent no delegates to the Philadelphia Convention, refused even to consider it. The truth is, notwithstanding all our boasting that the just powers of government are derived from the consent of the governed, a powerful minority in Pennsylvania, Massachusetts, New Hampshire, Virginia, and New York, backed by the almost unanimous vote of the other States, forced a ratification there; while North Carolina and Rhode Island were practically forced into the Union through fear of commercial discrimination, or of partition among neighboring States.

11. **Nature of the Constitution.**—The student who desires to become familiar with the real nature of the Constitution should study the debates both in the Federal Convention which framed it, and in the state conventions which ratified

it. These may be found in the volumes called *Elliot's Debates*. A series of articles that appeared in newspaper and pamphlet form, written mainly by Hamilton, with some assistance from Jay and Madison, expounding the Constitution and defending it, has become the standard text-book on the Federal Constitution, under the name of *The Federalist*. The framers of the Constitution were not attempting to construct a government upon theory. The strongest features of their plan are extracted from the state constitutions and adapted to the needs of the Federal State. With scarcely an exception a precedent may be found, for its most important features, in their experiences in government under the colonial charters or the Revolutionary constitutions. The idea of a written constitution was not new to them. Every colonial charter was essentially a constitution. The President may be considered as an enlarged copy of the colonial governor, with his veto power as in Massachusetts. The two-chambered legislatures of the States furnished the model for a two-chambered Congress. The Supreme Court had its origin in the practice of appealing to the British Privy Council for the annulment of acts of the colonial legislatures which were contrary to their charters or the laws of England. Even the Electoral College was suggested by the method of choosing State Senators in Maryland.

12. **The Great Compromises.**—The difference in the size of the States gave rise in the Convention to disputes, which for a time seemed to threaten to terminate the Convention without accomplishing anything. "The Convention was on the verge of dissolution," said Luther Martin of Maryland, "scarce held together by the strength of a hair." Roger Sherman and Oliver Ellsworth advocated a compromise. Franklin seconded their efforts and said: "When a joiner wishes to fit two boards, he sometimes pares off a bit from both." Edmund Randolph early introduced a plan, which has become known as the Virginia plan. It proposed a Congress of two houses with representation in each based on population; it also con-

templated that the executive and judicial officers should be appointed by the Congress. This would have placed the whole control of the government in the hands of the large States. The small States fiercely attacked the plan; but they were in the minority, for Rhode Island was not represented at all, and New Hampshire was not represented till late in July. By this time two of the three delegates from New York (for New York was then one of the small States) had withdrawn from the Convention. Others threatened to retire Patterson of New Jersey brought forward a small State plan, which is known as the New Jersey plan. Hamilton submitted his celebrated "monarchical plan." Pinckney of South Carolina offered a plan; but the contest turned upon the Virginia and New Jersey plans. The latter proposed a continuance of the Articles of Confederation, but gave to Congress the power to regulate commerce, the power of taxation, and the power to coerce States. On the final vote the Virginia plan was adopted as the basis for the new scheme of government. The situation had become exceedingly dangerous. Franklin urged that a little bit be pared off of all their plans. A spirit of compromise finally prevailed, and, by giving and taking, a plan of Union was at last formulated. There were many compromises made in framing the Constitution, some of which have become known as great compromises.

(1) When the Virginia plan carried, it became necessary to fix the basis of representation in the two houses. The small States were about to withdraw. The Connecticut delegates favored a compromise, and under their leadership the first compromise was brought about, whereby the States were to have equal representation in the Senate and proportional representation in the House of Representatives. The small States were satisfied.

(2) The second great compromise grew out of the basis of representation in the lower house, or House of Representatives. The Connecticut compromise had merely fixed the fact that representation was to be in proportion to population. But

were slaves, who had no vote, to be reckoned as a part of the population, or should they be considered merely as property, as so many cattle? It was finally agreed that representatives and direct taxes should be apportioned among the States upon a basis to be formed "by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons:" these other persons were slaves; but the original Constitution avoids making use of the word *slave*.

(3) The third great compromise also hinged upon the question of slavery. The commercial States desired that Congress should have full power to regulate commerce. The slave-holding States feared that the power might be used to prohibit the slave trade, which was then exceedingly profitable. It was their commerce. At last Congress was given power to regulate commerce, but was forbidden to prohibit the slave trade before 1808.

13. **The First Ten Amendments.**—Many of the States were dissatisfied with the fact that the Constitution contained no bill of rights. But it was said that none was necessary, because the Federal Government had only such powers as were delegated to it, while all other powers were reserved to the States, unless prohibited by the Constitution. Nevertheless, such was the fear of the encroachment of the Federal Government upon the powers of the States, that more than one hundred amendments were proposed before the Constitution was ratified. Some States for a time insisted on ratifying upon condition that certain amendments were adopted. But this was soon seen to be impracticable, for no two States seemed to agree upon the same amendments. The way the Constitution was submitted it must be ratified or rejected; it was a plain yes or no. But the first ten amendments, which are essentially a bill of personal rights, drawn mainly from old English precedents, were adopted so soon after ratification that they may be considered as a part of the original Consti-

tution. The wisdom of these amendments has been verified upon many occasions.

14. **A Government of Checks and Balances.**—It is often said that ours is "a government of checks and balances." The framers of the Constitution sought to parcel out the powers of government among the three coordinate departments,—legislative, executive, and judicial,—in such a way that each department could defend itself against the encroachments of the other two. It is not possible to make an analysis of the Constitution, for it deals in the briefest manner possible with general principles, omitting nearly all matter of detail. In this outline it will be possible to suggest some of the most important features only. So then, as we said, each department is set as a sort of check and balance upon the other. The departments are not absolutely separate and distinct. The executive power is vested in a President; but he also exercises important legislative functions when he approves or disapproves a bill, and high judicial functions when he sets at naught the sentence of the highest court by his act of pardon. The legislative power is lodged in Congress; but the Senate exercises executive functions, and becomes in fact an executive council, when it considers appointments and treaties. The judicial power is vested in the Supreme Court and in the inferior courts; but the courts exercise supreme legislative functions when they pass upon the constitutionality of laws, and sometimes abrogate laws that have received the sanction of the other two departments of power. The House of Representatives originates all measures for raising revenue. The sole exercise of this power gives to the House a high degree of indirect control over the executive department.

15. **The Doctrine of Sovereignty.**—Perhaps the United States is the only world-power in whose system the exact location of the sovereignty is still a mooted question. It is merely our purpose to point out the different views that have been entertained. The doctrine of the Calhoun school of statesman

was that the States were sovereign both before and after the adoption of the Constitution, that the Union was purely voluntary, and that the people of all the other States had no right to compel any State to remain in the Union against its will. In the early history of the country this view was not a sectional one. In the first half century quite as many threats of secession came from New England as from the country south of the Mason and Dixon line. The Civil War put an end to this theory, but it did not decide where the sovereignty is located. The doctrine first formulated by Madison still prevails. It assumes that the States were sovereign prior to 1789; that they gave up part of their sovereignty to the Federal Government; that the Constitution was made by the States, not by the whole people of the States; and that the powers not delegated to the Federal Government or prohibited to the States, are reserved to the people of the States, not to the whole people. It is the doctrine of "dual sovereignty." There is no questioning the fact that the States have *powers* and *functions* with which the Federal Government can not interfere, and that the Federal Government has *powers* and *functions* with which the States can not interfere. But where does power and function rest in its *entirety?* It has been the habit of able statesmen and jurists with us to speak of a divided sovereignty. But the term contradicts itself. The analyst holds sovereignty to be indivisible: it must be a whole. "Sovereignty," says Bismarck, "can only be a unit and it must remain a unit,—the sovereignty of law." What is it that gives the Federal Government its powers, and defines those reserved to the States? The Constitution. Who may alter the Constitution? The power that may do so would seem to be a sovereign unit. The tendency of later opinion is in the direction, that the whole people of the United States are a political power quite distinct from the States, or the people of the States. But the question is not without its difficulties in any phase in which we may view it.

16. Amendment to the Constitution.—The framers of the Constitution recognized that the instrument would need amendment, and so they provided two ways in which amendments may be proposed. No amendment can take effect without the sanction of the people of three-fourths of the States, no matter how it may have been proposed, expressed either through their legislatures or conventions.

(1) **Proposed by Congress.**—Two-thirds of both Houses of Congress may, whenever they deem it necessary, propose an amendment to the Constitution, and may submit it to the States for ratification in one of two ways, as Congress may determine: (a) by the legislature of each State; or (b) by a convention chosen in each State, as was the case in the adoption of the original Constitution.

(2) **Proposed by Convention.**—If the States desire amendments which the Congress will not propose, upon the application of the legislatures of two-thirds of the States, the Congress must call a convention for proposing amendments. The convention may propose amendments and forward them to Congress to be submitted to the States for ratification in one of the two ways above mentioned, namely, (a) by the legislature of each State; or (b) by a convention chosen in each State.

It will be observed that no matter how the amendment is proposed the mode of adoption must be the same. As a matter of fact no convention to amend the Constitution has ever been called, and no amendment has ever been ratified by any State by a State Convention, as the original Constitution was ratified. All amendments that have been adopted have been submitted by Congress and ratified by the legislatures of at least three-fourths of the States.

CHAPTER XLI.

THE CONGRESS.

1. **The National Legislature.**—The Legislative power of the United States is vested in a body called the Congress, which consists of two Houses, one known as the Senate and the other as the House of Representatives. The word "congress," like most words, has a number of meanings. Among nations it means an assembly of envoys for settling international questions, as at the Congress of Vienna; in a South American republic it means the lower house of the legislature; in Spain it means the lower house of the Cortes or national legislature; with us it means the whole national legislative body. When the colonies acted separately they naturally used the international word to describe their meetings, as the Albany Congress, the Continental Congress, etc.; and so the word has come into use to designate the national legislature.

2. **The House of Representatives.**—At first the character of the new government was not very well understood; indeed it was many decades before the mass of the people began to comprehend the wonderful scheme of government that had been set going by the adoption of the Constitution. Even at this day many new questions of construction and usage arise to plague us. It was at one time questioned whether the representatives were mere delegates from their States or whether they represented the people of the United States as well as the people of the State from which they were chosen. It is well settled now that they are under no obligation to take instructions from those who elected them. They may out of prudence heed the wishes of their constituents, but they are free to vote according to their own wishes.

(1) **Membership.**—The House of Representatives is composed of members chosen directly by the people of the several States every second year. They may be elected by the State at large or by districts laid off by the Legislature. Representatives must be twenty-five years of age, and must have been citizens of the United States for seven years. They must be inhabitants of the State from which they are chosen, but they need not live in the district from which they are elected. It has become a part of the unwritten custom, however, that a representative must reside in his district.

(2) **Apportionment.**—Representatives are apportioned among the several States in proportion to population, excluding Indians not taxed. Each State, however, is entitled to at least one representative. Just after the census in every ten years Congress decides the number of people that shall constitute the basis of representation, and determines the number of representatives that each State is entitled to under the new basis. Fractions are taken account of, and if the fraction is large enough it may entitle the State to a representative. The basis after the census of 1890 was nearly 174,000. On this basis West Virginia with a population of 762,794 had four representatives.

(3) **Election.**—All persons who may vote for members of the most numerous house of the State Legislature may vote for representatives in Congress. At the time of the formation of the Constitution the mass of the people did not vote for the upper house at all; but there is no distinction now. The States prescribe the times, places, and manner of holding elections for representatives, but the Congress has the power to make a complete Federal election law, taking the control away from the States, except as to the place of choosing Senators. But Congress has seen fit to leave the matter of the regulation of Federal elections with the States, except as to Senators. Federal law provides for the election of Senators. The legislature of each State has the right to divide the State

into Congressional districts, keeping the territory contiguous and as nearly equal in population as may be. In the desire to gain political advantages districts are sometimes laid off in a very disgraceful manner, in all sorts of odd shapes and sizes. This practice is known as gerrymandering, so named from a Massachusetts man named Gerry, who put the idea into practice.

(4) **Vacancies.**—Whenever a vacancy occurs the Governor of the State in which it takes place issues a proclamation, in the nature of a writ of election, announcing the vacancy and appointing a day upon which the voters of the district shall chose a man to fill the place.

(5) **Organization.**—On the day fixed for the meeting of a Congress the clerk of the preceeding House calls the new House to order and presides until a speaker is elected. The Speaker is so called, because in early times he was the "spokesman" between the king and the House of Commons. He was literally the "speaker" of all official communications. The House organizes by choosing one of its own members as the Speaker. As a member of the House he has a right to vote on all questions. In the last quarter of a century he has become an officer of great power in the Government, because he appoints the committees, and has absolute power of recognizing members who desire to be heard. He directs in fact the legislation of Congress. It is possible but very difficult to bring up a measure to which the Speaker is opposed. The House upon organization elects a Clerk, Sergeant-at Arms, Doorkeeper, and other officers. The Speaker appoints the chairman of the committees as well as the committees. The committees are so powerfully organized that they in fact control nearly all the acts of the House.

3. **The Senate.**—Each State large or small is entitled to two Senators, who are elected by the legislature of the State for the term of six years; and any person who has been a citizen

of the United States nine years, who has reached the age of thirty, and who at the time of his election resides in the State for which he is chosen, may be elected. The Senate is divided into three classes, so that one class goes out of office every two years. The Senate is therefore a continuous body, that is, it never expires as a whole, as is the case with the House. Two-thirds of the Senate is always in existence. The Senators may be said to represent the people of the State in their organized political capacity; but each Senator is entitled to vote according to his individual opinion. The Senators from the same State often vote on different sides of the same question. Their election and the filling of vacancies have been discussed in Chapter XXXV, and it is unnecessary to repeat here what is said there.

(1) **Organization.**—The Vice President of the United States is President of the Senate; but he is not a member, he is merely the presiding office. He has no vote except in case of an equally divided vote among the Senators, when he has the casting vote. If the Vice President should become President, or be absent or incapacitated from any cause, the Senate may choose one of its own number a President pro tempore. The Senate elects its committees: they are not appointed as in the House. It also chooses its own clerk and other officers.

(2) **The Senate as an Executive Council.**—The first Senate contained only twenty-six members. The original intention seems to have been to make the body a sort of executive council. Hence it was given the power to participate in presidential appointments to office, and in the ratificatian of treaties. But it has so increased in numbers that it has become more and more every year an active and coordinate branch of the national legislature.

4. **Privileges and Duties of the Two Houses.**—Each House is made the final judge of the election and qualification of its own members. If the right of a member to sit in either House is called into question, the House in which the question arises

decides the right; and from its decision there is no appeal.

Each House determines the rules of its own proceedings, may punish its members for disorderly behavior, and, with the concurrence of two thirds, may expel a member.

Each House shall keep a journal of its proceedings, and shall publish it from time to time, except such parts as may in its judgment require secrecy. One-fifth of the members may require the yeas and nays to be recorded in the journal upon any question on which a vote is taken.

Neither House, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two Houses shall be sitting.

A majority in each House constitutes a quorum, and each may compel the attendance of absent members in such manner and under such penalties as the House may provide.

5. **Privilege of Members.**—As the members of Congress act for the whole Nation they receive a fixed salary payable out of the United States Treasury. Congress may change the salary at any time. At present each member receives $5,000 a year and an additional allowance for traveling expenses called mileage. In order that they may be free to act at all times, they are privileged from arrest during their attendance at the session of their respective Houses, and in going to and returning from the same, except when they are charged with treason, felony, or breach of the peace. For a crime of so serious a nature they may be arrested at any time. If members could be sued for slander for words spoken in debate, they would often be intimidated. The legislator should be free and fearless in his attacks upon wrong doing. For this reason he may not be questioned in any other place for anything said in any speech or debate in either House.

6. **Restrictions of Members.**—No person holding any office under the United States shall be a member of either House during his continuance in office. No member of either House,

during the time for which he was elected, may be lawfully appointed to any civil office under the authority of the United States, which shall have been created or the income of which shall have been increased during such time. This is to prevent members from voting to create offices or increasing the income of any office with the expectation of filling the same. If he could do this he might make corrupt bargains with the President, who has the appointing power, or with other members, who might desire to fill similar offices.

7. **Powers of Congress.**—The legislative powers of the Union which are granted to Congress by the Constitution are such as by their very nature could not be successfully and harmoniously exercised by separate action of the States. The Confederation was a failure because above all other reasons Congress lacked the power of legislation upon those questions that concerned all the States as an entire group or body politic. The new Constitution enumerates the specific powers of legislation which the Congress may exercise without going into detail.

(1) **Taxation.**—Congress has power "to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts, and excises, shall be uniform throughout the United States." The expression, "provide for the common defense and general welfare," is not a grant of power of itself. It must be read in connection with the power to lay and collect taxes. If it were otherwise the Constitution need not have specified any further grant of power, because the "general welfare" is broad enough to cover any subject that Congress might choose to legislate upon. Put these words together: "Congress shall have power to lay and collect taxes to provide for the common defense and general welfare of the United States." This will give an idea of the limited sense in which this much misunderstood term, "general welfare," is used. Direct taxes must be apportioned among the several States according to population. Congress

has rarely levied a direct tax. Indeed it is not quite clear what is meant by a direct tax. The decisions of the courts are somewhat inconsistent. In general taxes laid on persons or property are classed as direct, while internal revenue, tariff duties, etc., are classed as indirect.

(2) **Borrowing Money.**—The usual way of borrowing money is for Congress to authorize the borrowing of so much money, and then to issue bonds payable in a specified time with a fixed rate of interest. Sometimes treasury notes are issued, which are the simple promises of the Government to pay the amount stated on the face of the note, without any interest. These notes are not money, they are merely promises of the United States to pay money. Government bonds and notes are not taxable by the States. The power is necessary to provide for extraordinary expenses. It is a sovereign power, and no nation could long exist without it.

(3) **Regulation of Commerce.**—We have seen how the lack of the power to regulate commerce led to the calling of the Constitutional Convention. The power "to regulate commerce with foreign nations, and among the several State, and with the Indian tribes," is expressed in a few words; but the powers are as extensive as the world. The States may regulate the internal traffic, but the moment it crosses a State line the Federal Government has control. If it were not so there would be no uniformity. The power to regulate implies the power to create commissions, appoint officers, prescribe laws and rules for carrying the power into effect. Congress has passed a law creating an Interstate Commerce Commission, which is charged with carrying into effect the Interstate Commerce Law. Under this grant of power Congress has established the Life-Saving Service, the Quarantine Laws, etc. No State can lay any burden whatever upon the interstate commerce, in the way of imposts or duties, except in the exercise of what is called the *police powers*, such as the execution of inspection laws to secure sound foods, etc.; and

then such duty must be paid into the Treasury of the United States.

(4) **Naturalization.**—Naturalization is the process by which an alien becomes a citizen. Congress has power to establish a uniform rule of naturalization, and Congress, has exercised the power by prescribing such rules. An alien must live in the United States five years before he can become a citizen. An alien is naturalized by proceedings in any of the courts of record, state or federal, in any State in which he has resided for a year. He must prove to the satisfaction of the court that he has lived in the country the required length of time, and that he has complied with all the requirements of law. He must show that he is of good moral character, attached to the principles of the Constitution of the United States, and is well disposed to the good order and happiness of the country. He is then required to take a solemn oath renouncing allegiance to any foreign State, prince, or sovereignty, and declaring that he will support the Constitution of the United States. None but white men and negroes may be naturalized

(5) **Bankruptcy Law.**—A bankrupt is a person who is unable to make payment of a just debt when legally due and demanded of him. A bankrupt law is one that is intended to discharge the bankrupt from the legal obligation of his debts under a decree of a competent court, upon his surrendering all his property for distribution among his creditors. The design is to enable honest but unfortunate persons to begin business anew. If Congress does not act the States may pass similar laws, usually called insolvency laws, but the debtor would be discharged only in the State which passed the law; he might be sued on the debt in any other State in which he might have property, or into which he might go. Of course none of these laws discharge the debtor from the moral obligation of his debts. Congress may pass uniform laws on the subject of bankruptcies throughout the United States; and when Congress does so the Federal laws takes the place of all

State laws on the subject. The present Federal law was passed in 1898.

(6) **Coinage and Currency.**—Congress has power to coin money, regulate the value thereof, and of foreign coin. In the early period of the Republic foreign coins circulated quite freely in the United States, but now we have our own coins. Money is coined at places called mints, of which there are several. The chief mint is at Philadelphia. Money is coined from gold, silver, nickel, and copper. The amount of metal to be included in each coin is fixed by law, according to its value, and the piece is stamped with the name of the United States and the amount for which the coin is to be received. Congress has fixed the standard of denominations and the value of each in which the coins may be issued.

(7) **Paper Money.**—The stamp of the Government adds nothing to a gold coin, because if the same quantity of gold existed in a mere lump it would be worth just as much in the market. But out of considerations of convenience and for many other reasons, we know that much paper passes in circulation for money. There are three main classes of paper money in circulation: first, National Treasury notes issued by the Government, which are the promises of the United States to pay the amount named on each note; second, National currency certificates, which are mere certificates to the effect that there has been deposited with the Government a certified amount of gold or silver payable to the bearer of the certificate; and third, National bank notes, which are the promises of the bank to pay the amount of the note. These notes are secured by the banks purchasing bonds of the United States and depositing the amount thereof with the Treasurer of the United States.

(8) **Weights and Measures.**—It would be exceedingly inconvenient to trade and commerce if different standards of weights and measures prevailed in the different States. Congress has power to fix a uniform standard. The English standard was

adopted, and we have become accustomed to it. Exact weights and measures are preserved by which tests in the case of disputes may be made. An effort has been made to fix a uniform standard among the leading commerical nations of the world, and the French metric system has been authorized by Congress, but its use has not been made compulsory. It would be a great convience to commerce if all the world had the same standard of weights and measures.

(9) **Punishment of Counterfeiting.**—The power to coin money necessarily carries with it the power to punish the counterfeiting of the securities and current coin of the United States, and so this power is given to Congress. Under the name of securities are included all bonds, coupons, national currency, government stamps of all kinds, and all other government issues representing value. The penalties for counterfeiting are printed on the back of some of the National Treasury notes.

(10) **Postoffices and Post Roads.**—The wisdom of lodging the whole power for the establishment of postoffices and post roads in Congress is so apparent that we scarcely stop to think that it might have been otherwise. The postoffices are divided into two main classes, first, Presidential postoffices where the President appoints the postmaster, who receives a salary of $1000 or upwards; and the second, those that are appointed by the Postmaster-General, who receive a percentage of the income of the office. Recently rural free delivery is bringing the postoffice nearer and nearer to the people, and wonderfully increasing the facilities for communication and business. While Congress may build post roads, it has usually adopted roads already built, including highways, railways, and waterways. But Congress has built some post roads. It built the old National Pike, sometimes called the Cumberland Road, from the Potomac to the Ohio River. The Union Pacific and Central Pacific railways were built under

the authority of this clause to be used as post roads and military roads.

(11) **Patent Rights and Copyrights.**—Congress has power to promote the progress of science and the useful arts by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries. The right granted to a discoverer is called a patent right; and that granted to an author, a copyright. Any one desiring to patent a discovery must file a description of it, and an official drawing, with the Commissioner of Patents, and pay the fees prescribed. The commissioner investigates the case, and if the discoverer is entitled to it under the laws of the United States a patent is issued to him which gives him exclusive rights for seventeen years. In certain cases he may renew the patent for seven years more. An author may copyright his work for twenty-eight years by sending two copies to the Librarian of Congress and paying a fee of one dollar. Under the international copyright treaties the same privileges are extended to citizens of foreign countries, provided they extend the same privileges to citizens of this country.

(12) **Establishment of Courts.**—Congress is given the express power to constitute tribunals inferior to the Supreme Court. It has so far constituted the following:

(a) A Circuit Court of Appeals in each of the nine circuits into which the United States is divided;

(b) A Circuit Court in each of the nine circuits;

(c) District Courts, numbering from one to three in each State;

(d) A Court of Claims, which sits at Washington, to adjudicate claims against the Government;

(e) Courts for the District of Columbia;

(f) A Supreme and District Court in each Territory.

These courts will be examined more at length in the chapter on the Federal Judiciary.

(13) **Crimes at Sea.**—Congress has power to define and punish piracies and felonies committed on the high seas, and offenses against the law of nations. Piracy is systematic robbery by marauders on the high seas. The high seas are the waters of the ocean beyond low tide. The jurisdiction of the United States extends over all bays and gulfs and three miles beyond low tide in the ocean. Beyond the three-mile limit is common ground among nations. Under the law of nations each nation has jurisdiction over its merchant ships on the high seas, but not in a foreign port; and over its war ships everywhere. A war ship is regarded as being a part of the territory of the nation to which it belongs wherever it may be found. Such important powers must of necessity belong to Congress.

(14) **War Powers.**—Congress is given power to declare war, to make all regulations respecting vessels engaged in war in any way, to make all laws respecting captures on land and sea, to raise and support armies, to provide and maintain a navy, to make rules and regulations for the government of all land and naval forces, to provide for calling forth the militia of the States to execute the laws of the Union, suppress insurrection, and repel invasions, and to provide for organizing, arming, disciplining, and governing the militia when in the service of the United States. All these are great sovereign powers which belong to the Nation. Congress, therefore, not the President, has the power to make a formal declaration of war; but war may exist without a declaration; in fact a state of war has usually in the history of the world preceded a declaration of war. The President may bring about a state of circumstances that may force Congress to declare war. The President as Commander-in-Chief exercises almost unlimited powers for the time being over territory acquired in war. A privateer is a vessel owned and officered by private persons, authorized by a license called letter of marque and reprisal, to carry on war at sea against an enemy at war with the

nation to which the privateer belongs. No privateers have been licensed by the United States since the war of 1812. The United States refused to authorize privateering in the war with Spain. The Treaty of Paris (1856) abolished privateering among the nations signing the treaty. The United States was not represented, but was asked to accede to the treaty. It offered to do so if private property at sea was exempt from seizure by armed cruisers as well as privateers. Vessels captured are called prizes and are usually sold under a decree of a United States District Court, and the proceeds divided among the officers and crew of the ship making the capture. The proceeds of capture on land belong to the Government.

(15) **Exclusive Legislation.**—Congress is given the power to exercise exclusive legislation over the District of Columbia, and to exercise the like authority over all places owned by the Government where forts, magazines, arsenals, dockyards, and other public buildings and structures may be located. Crimes committed there are tried in the United States Courts, but according to the laws of the State in which the crime is committed. The States have the right reserved to them to serve process in such places, otherwise they would become places of refuge for criminals. The reasons for Federal jurisdiction over such places in all the States are too apparent to call for comment here.

(16) **Implied Powers.**—Congress may make all laws which shall be necessary and proper for carrying into execution all powers vested by the Constitution in the Government of the United States, or in any department or officer thereof. The clause stating this fact does not grant any new power. Justice Story says, "It is merely a declaration, to remove all uncertainty, that every power is to be so interpreted as to include suitable means to carry it into execution." The Constitution merely enumerates powers; it does not define them. It was early asserted by Hamilton and other distinguished framers of the Constitution, that the grant of certain powers

implied the grant of certain other powers incidental to those enumerated. Many political controversies have arisen out of this "doctrine of implied powers." The doctrine has been accepted by the United States; and the establishment of National banks, the improvement of rivers and harbors, the building of lighthouses, the creation of a National Board of Health and of a National Bureau of Education, may be cited as instances of the exercise of implied powers.

(17) **Federal Elections.**—We have already noticed some of the powers of Congress with respect to Federal elections. The time and manner of electing Senators have been prescribed by Congress, and a uniform time for the election of Representatives has been prescribed, as well as for the election of electors for President and Vice President. Congress has also prescribed statutes governing the time, place, and manner of voting by presidential electors, and has made the day the same throughout the United States.

(18) **Presidential Succession.**—Congress may provide by law for the presidential succession in case of removal, death, resignation, or inability of both the President and Vice President, declaring what officer shall then act as President. It was not until 1886 that a law was passed sufficiently comprehensive to guard against all vacancies.

(19) **Civil Service.**—Congress has power to vest the appointment of such inferior offices at it thinks proper in the President alone, in the courts of law, or in the heads of departments. Under this power Congress has provided a civil service law for appointment of certain classes of inferior officers upon merit.

(20) **New States.**—All questions connected with the organization of new States are to be determined by Congress, with the exception that no new State shall be formed or erected within the jurisdiction of any other State, nor any State be formed by the junction of two or more States, or parts of States,

without the consent of the legislatures of the States concerned, as well as of the Congress.

(21) **Government of Territory.**—Congress has power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States.

8. **Impeachments.**—The President, Vice President, and all civil officers of the United States shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crime or misdemeanor. What has been said in Chapter XXXV with respect to the method of procedure in the impeachment of a State officer applies to the like proceeding in the impeachment of an officer of the United States. The remedy of impeachment is of such a grave nature that it is used only in cases of the most serious kind, and is rarely resorted to. The most celebrated case of impeachment in this country was that of President Johnson in 1867. The Senate did not convict him on any charge brought by the House in its articles of impeachment, though upon one article but a single vote was wanting.

9. **Prohibitions on Congress.**—Article I, section 9, of the Constitution lays certain restrictions upon Congress, which are extended and enlarged by some of the amendments. We shall now take note of these prohibitions.

(1) **The Slave Trade.**—Congress was prohibited from abolishing the slave trade prior to 1808; but as slavery has been abolished this provision is now of no value except as a matter of history.

(2) **Export Duties.**—Congress can lay no duty upon any article exported from any State. This provision guarantees free export trade.

(3) **Interstate Trade.**—No regulation of commerce or of revenue can give any preference to the ports of one State over those of another; and no vessel, bound to or from one State, shall be obliged to enter, clear, or pay duties in another. This

is intended to secure free trade between the States. A vessel *enters* when she comes into port and reports her arrival and cargo to the customhouse officers. She *clears* when she obtains the necessary papers from these officers granting her leave to sail. Interstate trade is free from the visits of customhouse officers.

(4) **Habeas Corpus.**—The privilege of the writ of *Habeas Corpus* shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it. At the time of the Civil War it was not well understood which branch of the Federal Government had the right to suspend the writ. President Lincoln assumed the power, but the Supreme Court decided that Congress was the proper body to authorize its suspension. Congress later ratified the acts of the President. Before this time two or three generals had temporarily suspended the writ in a very limited territory.

(5) **Bills of Attainder.**—No bill of attainder may be passed by Congress. None had been passed in England for about one hundred years at the time the Constitution was adopted, and none has been passed since. A bill of attainder is a legislative act finding a person guilty of a crime without trial and fixing sentence of death, and attainting the blood of his children so that they may not inherit his property.

(6) **Ex Post Facto Laws.**—No *ex post facto* law shall be passed. This term relates to criminal law. It is a law that makes an act *worse*, either by declaring an act criminal that was not so when committed, or by increasing the penalty and applying it to the act after it was committed. This is one of the fundamental rights of English liberty.

(7) **Titles of Nobility.**—Congress may grant no title of nobility. And no person holding an office of trust or profit under the United States shall, without the consent of Congress, accept any present from any king, prince, or foreign State. Sometimes Congress passes a special act authorizing

the acceptance of such a gift. Many such presents may be seen in the National Museum at Washington, where they have been presented to the Government by the persons receiving them.

(8) **Public Funds.**—Such is the care of the public funds that Congress is forbidden to draw any money from the Treasury unless in consequence of an appropriation made by law; and a regular statement and account of receipts and expenditures of all public money shall be published from time to time.

(9) **Public Debt.**—The validity of the public debt, including debts incurred for the payment of pensions and bounties for service in suppressing insurrection or rebellion, shall not be questioned. And the United States is forbidden to assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave.

(10) **Personal Liberties.**—The first ten amendments in particular contain many provisions against any possible encroachment of Congress on the personal liberties of the citizen. Congress can make no law establishing religion, abridging the freedom of the press, denying the right to peaceably assemble, the right to petition for a redress of grievances, the right to a speedy trial, the right of trial by jury, together with many other guarantees respecting personal and property rights. But these can be best understood only from a careful study of the Constitution itself with the assistance of some able commentary on the subject.

10. **Prohibitions on the States.**—The sovereign power that made the Constitution laid its prohibitions upon the States as well as upon the Federal Government. For convenience we may take note of them here.

(1) **Absolute Prohibitions.**—These are embodied in the following words: "No State shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal;

coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts, or grant any title of nobility."

Some of these it will be observed the Congress may exercise. Congress may issue bills of credit and make them a legal tender in payment of debts, but no State may do so. A State may pass insolvent laws as to future contracts, but not as to past contracts. For this reason no State can pass a bankrupt law.

(2) **Conditional Prohibitions.**—Another class of powers prohibited to the States is conditioned upon the consent of Congress. These are in the following words:

"No State shall, without the consent of Congress, lay any impost or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts, laid by any State on imports or exports, shall be for the use of the Treasury of the United States; and all such laws shall be subject to the revision of the Congress. No State shall, without the consent of Congress, lay any duty of tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another State, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as not to admit of delay,"

As a matter of fact Congress has never given consent that any State might exercise any of these powers. Some of the States have laws for the inspection of food supplies, so as to secure the quality and quantity of the commodity purchased, passed without the consent of Congress, such as a dairy commission; but no fees can be chaged for their supervision and inspection, without the consent of Congress, and then only enough to pay the costs of inspection. The importance of placing the exercise of the other powers prohibited by these sections under the control of Congress is apparent. If it

were not so any state might embroil the United States in endless political complications. This is in marked contrast with the German Federal Empire in which some of the States may send ambassadors to foreign courts, may maintain separate armies, and control their own railways, posts, and telegraphs, and may perform other sovereign functions prohibited by our Constitution to the States.

11. **Congressional Legislation.**—The real control of legislation in Congress is in the hands of the committees. Congress frequently appoints committees to investigate and report upon some department of the administration for the information of Congress. These committees may call and examine witnesses and may send for papers. The House has the sole power of originating a revenue bill; that is, a bill for raising money; but an appropriation bill, that is, a bill for spending money, may originate in either House. Of course the Senate may amend a revenue bill after it has come into the Senate from the House. The procedure for the passage of a bill is much the same as in the state legislature, which has been fully explained in Chapter XXXV. The President is allowed ten days in which to examine a bill passed by Congress, within which time he may approve it and sign it or he may disapprove it and return it to the House in which it originated with his objections to its passage. If Congress should adjourn before the expiration of the ten days, the bill fails unless the President has signed it. He may not sign a bill after the adjournment of Congress. If the President should retain a bill for ten days without either signing it or returning it to the House in which it originated, it will become a law without his action. Congress may pass a bill over the President's veto by a two-thirds vote. Every order, resolution, or vote to which the Senate and the House must agree (except on a question of adjournment) must be presented to the President, the same as a bill, and may receive the same treatment at his hands.

12. **Acts of Congress.**—The acts of Congress are published

under the direction of the Secretary of State, and may be found in the public libraries. The following publications include the general laws of the United States:

(1) United States Revised Statutes, 2nd edition, 1878.

(2) Supplement to the Revised Statutes, 1st edition, 1881.

(3) Supplement to the Revised Statutes, 2nd edition, 1891.

The following publications contain the current acts of Congress for each session and each year, together with all joint resolutions, recent treaties, and important executive proclamations:

(1) Statutes of the United States, for each session of Congress.

(2) United States Statutes at Large, for each Congress covering the period of two years.

The acts of Congress are arranged in two classes, namely, (a) Public Laws of the United States, and (b) Private Laws of the United States. The general compilations of laws as a rule, both State and Federal, do not include acts of a purely local, individual, or private nature. These are usually to be found in the acts of the session alone at which they are passed.

CHAPTER XLII.

THE EXECUTIVE DEPARTMENT.

1. **The President.**—"The executive power," says the Constitution, "shall be vested in a President of the United States of America," who "shall hold his office during the term of four years." While the executive power and responsibility resides in the President, we know, of course, that many men are required to carry into effect these executive powers. They are too numerous and extensive for one man to perform. The President is therefore assisted by numerous heads of departments, bureaus, boards, and commissions. The unity and strength of the government is quickened by the general oversight and control of a single responsible executive. The President must be a natural born citizen of the United States, thirty-five years of age, and resident within the United States for fourteen years. The presidential term is four years, but he may be reelected any number of times. It has become a part of the unwritten practice of the country not to elect any man to the presidency more than twice. The President receives a compensation prescribed by law, which can neither be increased nor diminished during the period for which he was elected. The salary is now fixed at fifty thousand dollars a year; and no other emolument may be received by the President from the United States or from any State during his term of office. The office is one of great power and responsibility. The whole official term is called an administration. The President and the heads of the executive departments have the appointment of more than one hundred thousand

officers who assist in the administration of the executive department.

2. **The Vice President.**—A Vice President is elected at the same time as the President, for the same term and with the same qualifications. He is provided as a substitute to take the place of the President in case of a vacancy. His only official duty is to preside over the Senate. He receives a salary of eight thousand dollars. Four Vice Presidents have succeeded to the Presidency. Harrison and Taylor died in office and were succeeded by Tyler and Fillmore; Lincoln and Garfield were assassinated and were succeeded by Johnson and Arthur.

3. **Presidential Elections.**—The President and Vice President are not elected by the direct vote of the people. It was the original intention that each State should elect a body of men called electors, who should meet, deliberate, and choose of their own free will the best man for President; but it was soon found that this plan would not work in practice. The Twelfth Amendment to the Constitution was adopted with the intention of overcoming the deficiency of the original Constitution, but still the difficulty has not been met. The development of government by political parties has made of the Presidential Electors a mere device for registering the vote of each State.

(1) **Electors.**—Each State elects a number of electors equal to the total membership of the State in both houses of Congress. These electors are chosen at the regular election on the Tuesday following the first Monday in November of the year which immediately precedes the expiration of the Presidential term. In the meantime each political party has met in National convention and has nominated candidates for President and Vice President. The electors are nominated in state conventions. The people vote directly for the electors, but it is well understood that the electors will vote for the candidates for President and Vice President nominated by

their party. Each State decides for itself how it will elect its electors. West Virginia nominates one elector for each Congressional district and two from the State at large; but all the candidates for elector are chosen by the total vote of the State.

(2) **How Presidents are Chosen.**—The electors chosen at the November election are required by act of Congress to meet at the capitals of their respective States on the second Monday in January, and vote by ballot for President and Vice President. One of the candidates voted for must not be from the same State as the electors. A separate ballot is cast for President and Vice President. The meeting of the electors is called the Electoral College. The ballots are counted and lists made of all persons voted for. These separate lists are made, signed, and certified, two of which are transmitted to the President of the Senate of the United States,—one by mail and one by special messenger,—and the other is filed with the judge of the District Court of the United States for the district in which the electors meet. The President of the Senate opens and counts these returns on the second Wednesday in the following February in the presence of the Houses of Congress sitting in joint session. The person having a majority of all the electoral votes is declared elected President. If no one has a majority, the House of Representatives must choose immediately, by ballot, the President from among the persons, not exceeding three in number, having the highest number of votes for President. In this ballot each State has one vote to to be determined by the majority of the representatives from that State, and a majority of the States is necessary to a choice. Two-thirds of the States is necessary to form a quorum for such an election. If the House of Representatives should fail to elect a President by the fourth of March, the person chosen as Vice President shall act as President. If the Electoral Colleges should fail to elect a Vice President as well as a President, the Senate must choose a Vice President from the two having the highest number of votes. Two-thirds

of the Senate is necessy to a quorum, and a majority of the whole Senate is necessary to elect. The House of Representatives has chosen two Presdents: Thomas Jefferson in 1801, and John Quincy Adams in 1825, although Andrew Jackson had more electoral votes than Adams.

4. **Inauguration.**—The formal ceremony attending the administration of the oath of office to the President is called the inauguration. This takes place on the fourth day of March following his election. He usually delivers an inaugural address, stating the principles and policies that shall guide him during his administration. The oath of office prescribed by the Constitution is then administered to him, usually by the Chief Justice of the Supreme Court. In the early days of the Republic an inauguration was quite a simple affair; but in recent years it has come to be attended with much pomp and ceremony, participated in by delegations from all parts of the United States and the Territories.

5. **Official Residence.**—The official residence of the President in Washington is called the White House. Here the President resides with his family and performs most of his official functions. At his public receptions held upon stated occasions any person may pay his respects to the President. These receptions preserve the democratic spirit of our institutions, and emphasize the cardinal principle of the political equality of all men.

6. **The Presidential Succession.**—In 1792 Congress provided that in case of a failure of both the President and Vice President the President *pro tempore* of the Senate, and next after him the Speaker of the House, should succeed to the Presidency. Many objections arose to this line of succession, because it might happen that neither House would have a presiding officer and because these officers might not belong to the same party as the President and might change the political complexion of the administration. So in 1886 a new act was passed which gives the succession to the heads of deparments

in the order in which we discuss them further on in this chapter; except that the Secretary of Agriculture does not come in the line of succession, because his office was created after the act was passed, These officers are named by the President and are identified with his policy. But the necessity for a successor outside of the Vice President has never arisen. It is a mere possibility not likely to occur.

7. **Effects of the Party System.**—The idea of the framers of the Constitution was undoubtedly that the electors should freely vote for the great, good man of the Nation for President. Washington alone was elected in pursuance of this idea. But by the end of his term parties had come into existence, and since that time no elector has ever thought of voting for any one except the choice of his party. There are people who habitually deplore party government; but it is the logical result of our system of popular government. The electors could not meet the demands of national organization, because they are required to meet in their own States. They can not act in concert. Hence the National Convention has been devised, and to some extent performs the functions intended by the framers of the Constitution to be performed by the electoral colleges.

8. **Presidential Powers and Duties.**—The powers and duties of the President are so numerous and extensive that for the sake of convenience in study they may be grouped under a number of heads. The more important ones may be classified as follows:

(1) **Legislative Powers.**—The President sends to each session of Congress a message giving information of the State of the Union, and recommending to their consideration such measures as he shall judge necessary and expedient. He may send such messages as often as he thinks proper. Washington and Adams went into Congress in person and delivered their messages verbally; but Jefferson set the example of sending written messages, and the custom has been followed by

later Presidents. He may convene Congress in special session; and in case of disagreement over adjournment, he may adjourn the Houses to such time as he thinks proper. This power of adjournment has never been exercised. He may approve or disapprove bills passed by Congress; and in case of his veto it can only be overcome by a two-thirds vote of each House. These powers relate to legislation and may be called the legislative powers of the President.

(2) **Appointing Power.**—The President nominates and, by and with the advice and consent of the Senate, appoints all officers, civil and military, whose appointments are not otherwise provided for in the Constitution, and whose offices shall be established by law. All of his appointments are subject to the confirmation of the Senate. The Constitution gives to Congress the right, however, to vest the appointment of inferior officers in the President alone, in the courts of law, or in the heads of departments. Congress has passed laws relieving the Senate of any participation in the vast majority of all executive appointments. The assent of the Senate is still necessary to the appointment of ambassadors, other public ministers, and consuls, judges of the court, the chief departmental officials, the principal postoffice and customs officials, and the more important servants of the government. The Senate has frequently rejected nominations to office made by the President. The power of appointment includes the power of removal, for which the consent of the Senate is not necessary. A large class of persons on the government payrolls are not officers, but merely employes. In the case of vacancies happening in offices during the recess of the Senate, to the filling of which the consent of the Senate is required, the President may fill the same until the end of the next session of the Senate. He issues commissions, a document authorizing an officer to fulfill the duties of an office, to all the officers of the United States no matter how elected or appointed.

(3) **Pardoning Power.**—The President has power to grant

reprieves and pardons for offences against the United States, except in case of impeachment. A reprieve temporarily postpones the sentence of the court. A pardon is an absolute release from the sentence of the court from the date it is granted.

(4) **Relations of Ministers.**—As the Representative of the Nation the President receives ambassadors and other public ministers from foreign countries. The United States had no ambassadors until after 1893, when an act of Congress authorized their appointment to such countries as would send ambassadors to this country. The distinction between ambassador and minister is one of rank and etiquette more than rights and powers. An ambassador was formerly the representative of a sovereign. When a foreign minister arrives in Washington he sends his papers to the Secretary of State, and receives from that officer information as to when the President will receive him. Two nations at peace determine for themselves what grade of ministers will be exchanged. Usually a great power will not send a minister of high rank to a small power.

(5) **Treaty-Making Power.**—A treaty is a solemn compact or agreement between two or more sovereign States. A treaty duly ratified has all the force of a law. The Constitution, the laws of the United States, and treaties made under authority of the United States, constitute the supreme law of the land. The President, or by his authority the Secretary of State, or some minister, or commission, negotiates treaties. It may be readily seen that it would be dangerous to lodge so extensive a power in any one officer or department of government without some check. So the consent of the Senate is necessary to the ratification of a treaty, in which two-thirds of the members must concur. The House has no real share in the treaty-making power; but if the treaty were one which required the payment of money, as was the case in the peace treaty with Spain, it would be necessary for the Congress to pass an appropriation bill, including the sum, before it could

be paid. Treaties of this kind have been ratified, and the House has never refused to make the payment. The House is bound for the honor of the Nation to make the payment. When the Senate considers a treaty it goes into what is called "executive session," that is, secret session, because it is to consider an executive communication. The President is not bound to submit a treaty to the Senate for action unless it pleases him: in such a case the treaty would fail for want of ratification.

(6) **The Enforcement of the Laws.**—The want of executive power was so keenly felt under the Confederation that the framers of the Constitution had no difficulty in reaching the conclusion that the Federal Executive should not be wanting in energy of execution, if that could be accomplished with safety to the people. He was therefore charged with the plain and simple duty of taking care that the laws be faithfully executed. In order to do this he may call to his aid the whole civil and military force of the Government.

(7) **War Powers.**—As the President is charged with the execution of the law it is proper that the command of the army should be vested in him. Accordingly he is made commander-in-chief of the army and navy of the United States, and of the militia of the several States when called into the actual service of the United States. An army to be efficient must always have a single head, and it is eminently proper that the President should fill that place. The actual operations of the army and navy in service have been directed by officers appointed by the President, under such general instructions as he has seen proper to issue. He has never taken the field in command of the army; but there is no law to prevent him from doing so. Indeed President Taylor, when confronted with the possibility of insubordination on the part of some of the officers of the army, threatened to do so. As a rule the President has quite enough to do to give general directions,

leaving the conduct of active operation to his subordinate officers.

9. **The Cabinet.**—The Constitution does not in so many words provide for a Cabinet. It does not even say that the heads of departments shall be appointed. It merely states that the President may require the opinion in writing of the principal officer in each of the Executive Departments, upon any subject relating to the duties of their respective offices. The heads of these departments are called Secretaries. The President is the responsible head, for he appoints the Secretaries and they are responsible directly to him. It has become the practice for the President to assemble his Secretaries for consultation on questions of Administration. These assemblies are called Cabinet meetings. The first Congress created four executive departments, namely, of State, of the Treasury, of War, and of Justice. Four, more have been added, namely, the Post-Office, the Navy, the Interior, and Agriculture, in the order named.

(1) **The Department of State.**—The department which we call the Department of State, under most other governments is called the "Foreign Office," or the "Department of Foreign Affairs." In our Department of State there is a Diplomatic Bureau; a Consular Bureau; a Bureau of Indexes and Archives; a Bureau of Accounts; a Bureau of Rolls and Library; and a Bureau of Statistics. Every department and bureau has many assistants, clerks, attaches, and employes for the performance of the duties belonging to each.*

(2) **The Treasury Department.**—The Secretary of the Treasury has charge of the finances of the National Government. He makes annual and special reports on the state of the finances, and submits to Congress estimates of the probable

*Every school room should have a copy of the Congressional Directory; the United States Register or Blue Book; and one or two Political Almanacs, such as the New York World Almanac, or the New York Tribune Almanac. The Directory and Blue Book may be had by any teacher who will write to the Congressman of his district.

revenues and expenditures. He Prepares and submits plans for the improvement of the revenue; superintends its collection; prescribes the forms for keeping accounts; issues warrants for all payments out of the Treasury; and grants proper vouchers for all payment into the Treasury. The organization of the department includes the following: three Assistant Secretaries; a Chief Clerk; a Comptroller of the Treasury; the Auditor of the Treasury Department; Auditors for the War, the Interior, the Navy, the State, and other departments; a Treasurer of the United States; a Register of the Treasury; a Comptroller of the Currency; a Director of the Mint; the Customs Service; the Internal Revenue Service under the supervision of a Commissioner; the Bureau of Engraving and Printing; the Supervising Architect's Office; the Secret Service Division; the Bureau of Statistics; the Life-Saving Service; the Bureau of Navigation; the Office of Steamboat Inspection; the Lighthouse Board; the Coast and Geodetic Survey; the Marine Hospital Service; and the Bureau of Immigration. These are merely the chief bureaus and divisions, each of which has a vast number of clerks, attaches, and employes.

(3) **The War Department.**—This department has supervision of the estimates of appropriations for the army; the Military Academy at West Point; National cemeteries; river and harbor improvements; the establishment of harbor lines; the location of bridges over navigable streams authorized by Congress; and performs such duties relating to the military service as may be enjoined upon the Secretary by the President. There is attached to the department an Assistant Secretary, a Chief Clerk, and subordinates. The department is organized upon the basis of military bureaus, the chiefs of which are the officers of the Army of the United States. They are the following: The Adjutant General; the Inspector-General; the Quartermaster-General; the Commissary-General; the Surgeon General; the Paymaster-General; the Chief of Engineers; the Chief of Ordinance; the Judge-Advocate-General; the Chief

Signal Officer; and the Chief of the Record and Pension Office. The titles of these heads of bureaus will indicate the general character of their duties.

(4) **The Navy Department.**—The Secretary of the Navy performs such duties as may be assigned to him by the President, and has general supervision over the construction, manning, equipment, and employment of vessels of war. He has also supervising control over the Naval Academy at Annapolis, training schools and ships, the National shipyards and docks. He has an Assistant Secretary, a Chief Clerk, and subordinates. The bureaus are in charge of officers of the United States Navy. The department includes the following: the Bureau of Navigation; the Bureau of Yards and Docks; the Bureau of Equipment; the Bureau of Ordnance; the Bureau of Construction and Repair; the Bureau of Steam Engineering; the Bureau of Medicine and Surgery; the Bureau of Supplies and Accounts; a Judge-Advocate-General; the Marine Corps; and the National Observatory, located at Georgetown Heights, near Washington.

(5) **The Department of the Interior.**—This department was established in 1849. The Secretary has supervision of matters relating to patents and inventions; the public lands; pensions; the census; the Indians; education; railroads; distribution of appropriations for agricultural and mechanical colleges; the Geological Survey; and the custody of certain hospitals in the District of Columbia. There is a First Assistant, an Assistant Secretary, and subordinates The Department is organized upon the basis of bureaus in charge of chiefs.

(6) **The Post-Office Department.**—The head of this department is the Postmaster-General. Benjamin Franklin was the first Postmaster-General, having been appointed in 1775 by the Second Continental Congress. More than half the persons employed by the United States are in the service of this department. The Postmaster-General appoints all officers and employes of the department, except the Assistant Postmas-

ters General; who are appointed by the President; all postmasters whose compensation does not exceed $1,000; awards contracts with respect to the service; and, with the approval of the President, makes postal treaties in regard to the foreign mails. There are four Assistants.

The First Assistant Postmaster-General has charge of Salaries and Allowance, Free Delivery, Post-Office Supplies, Money Orders, Dead Letter Office, and Correspondence.

The Second Assistant Postmaster-General has charge of the transportation of the mails, which is managed by appropriate divisions.

The Third Assistant Postmaster-General has charge of matters relating to Stamps, Finance, Registered Mail, Mail Classification, the Division of Files, Mail, etc., and the Special Delivery System.

The Fourth Assistant Postmaster-General has charge of the Inspection of Post-Offices, Depredations and Offenses, Bonds and Commissions, and the Division of Appointments.

(7) **The Department of Justice.**—The head of this department is called the Attorney-General. He is the chief adviser of the Nation in all legal matters, exercises supervision over all assistants, United States Attorneys, and Marshals in all the States and Territories. He has the assistance of four Assistant Attorneys-General, a Solicitor-General, a Chief Clerk, and other clerks and employes. His department prosecutes and defends the legal interests of the United States in all courts.

(8) **The Department of Agriculture.**—This department was given a Secretary in 1889. He has charge of all public business relating to agricultural industries. Its chief purpose is to spread information among the people on agricultural subjects, and to distribute new and valuable seeds and plants. The department has an Assistant Secretary, a Chief Clerk, and subordinates. The nature of the work of this department may be suggested by the following list of bureaus and divisions:

The Weather Bureau; Bureau of Animal Industry; the Statistician; Division of Accounts and Disbursements; Division of Chemistry; Office of Experiment Stations; the Etomologist; Division of Biological Survey; Division of Forestry; Division of Botany; Division of Agrostology; the Pomologist; Division of Vegetable Physiology; Office of Fibre Investigations; Office of Road Inquiry; Division of Publications; and the Division of Gardens and Grounds. Some of these names are too scientific to be familiar to the general student, but it will be readily observed that agriculture is as capable of scientific study and conduct as any other profession or business.

(9) **Separate Boards, Bureaus, and Commissions.**—There are a number of separate boards, bureaus, and commissions created by acts of Congress for the performance of certain work and the discharge of certain duties, that do not come under the supervision and control of any cabinet department. These are the following:

(*a*) *The Department of Labor*, in charge of a Commissioner of Labor, whose duty it is to collect, compile, and publish information relating to this department.

(*b*) *The Civil Service Commission*, composed of three commissioners, whose duty it is to formulate rules and regulations for carrying into effect the civil service laws of the United States.

(*c*) *A Commissioner of Fish and Fisheries*, who has charge of the work for the encouragement of fish culture as a source of food supply.

(*d*) *The Interstate Commerce Commission*, composed of five members, who have extensive powers of control over questions of interstate commerce.

(*e*) *The Government Printing Office*, in charge of the Public Printer.

(*f*) *The Board of Geographic Names*, composed of officers of the Geological Survey, Coast and Geodetic Survey, Army and Navy officers, and others.

(*g*) *The Intercontinental Railway Commission*, in charge of three commissioners whose duty it is to conduct surveys and make reports for an intercontinental railway.

(*h*) *The Bureau of American Republics* charged with the collection and distribution of information relating to commerce among the American Republics.

To these might be added many institutions such as the Library of Congress, the Smithsonian Institution including the National Museum, Bureau of American Ethnology, etc., etc.; but it is impossible to name all of them here. We are endeavoring to give a mere suggestive outline of the structure of our Federal Government, not a treatise on its functions in detail.

CHAPTER XLIII.

THE JUDICIAL DEPARTMENT.

1. **The Judicial Power.**—The Constitution in a measure organizes the Legislative and Executive Departments, but the organization of the judicial Department is left to Congress. It merely provides the broad fundamental fact that the judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. It names the Supreme Court and fixes its original jurisdiction in all cases affecting ambassadors, other public ministers, and consuls, and those in which the State shall be a party. All other questions of names and number of courts and their jurisdiction, and the number of judges of which they shall be composed, are left to be determined by Congress. The Judiciary act of 1789 was drawn by Oliver Ellsworth of Connecticut, and was so well done that it remains to this day the basis of the organization of the Federal courts.

2. **Tenure of Office and Salary of Judges.**—The judges of both the supreme and inferior courts, by the terms of the Constitution, hold their offices during good behavior, and receive a compensation fixed by Congress, which may not be diminished during their continuance in office. These provisions render the courts independent of Congress and public opinion, and have done much to preserve the purity and dignity of their decisions. A Federal judge may be removed from office by conviction upon impeachment. He may retire upon full pay when he reaches the age of seventy years, provided he has served ten years in the court. The Chief Justice receives

$10,500; associate justices, $10,000; and the judges of the inferior courts, from $3,500 to $6,000. The justices of the Territorial courts receive $3,000, and of the Courts of the District of Columbia $4,500, except the chief justice who receives $5,000.

3. **Classes of Courts.**—There are two main classes of courts: (1) Courts of the United States, and (2) Territorial Courts. The judges of all the courts of the United States, appointed under the authority of Article III of the Constitution, hold their offices during good behavior. Those falling in this class are the following: the Supreme Court; the Circuit Courts of Appeals; the Circuit Courts; the District Courts; and the Court of Claims. The Territorial courts exist under the authority conferred upon Congress in Article IV of the Constitution to make all needful rules and regulations respecting the territory or other property belonging to the United States. Congress has established a Supreme Court of the District of Columbia, and a Supreme Court and District Court in every Territory, and has fixed the term of office of the judges of the Territorial courts at four years. Says Mr. Woodrow Wilson, "The Federal courts sitting in the States, and the United States courts established in the Territories, ought not to be thought of as parts of the same system, although the Supreme Court of the United States is the highest tribunal for both."

4. **The Supreme Court.**—As the Supreme Court is the highest so it is the most important of all the courts. It consists of a Chief Justice and eight associate justices, six of whom constitute a quorum. It holds its sessions in the Capitol at Washington. In addition to its orignal jurisdiction already noticed it has appelate jurisdiction over certain cases tried in the inferior courts in accordance with laws enacted by Congress. A case tried in a state court may be taken on appeal to the Supreme Court of the United States, when the question raised involves a right under the Federal Constitution or laws. The suit now pending in this court by Mary-

land against West Virginia was brought there because the Supreme Court has original jurisdiction in all cases where a State is a party.

5. **Circuit Court of Appeals.**—As there are nine justices of the Supreme Court the United States is divided into nine circuits. The fourth circuit is composed of the States of Maryland, Virginia, West Virginia, North Carolina, and South Carolina. A justice of the Supreme Court is assigned to each circuit. In 1891 and act was passed by Congress creating a Circuit Court of Appeals in each circuit, for the purpose of relieving the Supreme Court which was years behind in its work. The Chief Justice is allotted to this circuit. There are two circuit judges appointed for each circuit, and they, together with the justice assigned to the circuit, constitute the full bench of the Circuit Court of Appeals. Any two may make a quorum, but in the absence of any one of them the judge of the District Court may take his place. This court must hold at least one term a year. In this circuit it meets at Richmond, Virginia. Chief Justice Fuller, Judge Nathan Goff of West Virginia, and Judge Charles H. Simonton of South Carolina compose the full bench of this court, in this circuit. No suits are brought in this court in the first instance. It hears only cases brought on appeal from the circuit and district courts; and its decisions in many cases are final, where formerly they went to the Supreme Court for decision.

6. **Circuit Courts.**—What we have said about the Circuit Court of Appeals has explained the composition of the circuit courts. The justice of the Supreme Court allotted to the circuit must attend at least one term of the circuit court in each district once in two years. A circuit court may be held by one or two of the following judges: the justice allotted to the circuit, the two circuit judges, and the district judge. The circuit court has original jurisdiction in copyright and patent-right cases, in civil cases involving more than $500,

and in the graver criminal cases. It must meet at least once a year in each of the districts composing the circuit.

7. **District Courts.**—Each State has at least one district court of the United States, some have two, and a few of the larger ones have three. West Virginia at present constitutes a district but an effort is making to divide the State so as to have two. Judge John J. Jackson of Parkersburg is judge of the district court in this State. But it should be noted that the judges of all the courts of the United States, inferior to the Supreme Court, are interchangeable: that is to say, a circuit judge may hold a district court and a district judge may hold a circuit court, or any two may hold under some circumstances either a circuit court or a district court. Judges from other districts amd circuits may be assigned to hold courts under some circumstances. If the United States has a court to be held it has abundance of law for providing a judge or judges to hold it. Both the district and circuit courts have petit juries and grand juries. The jurisdiction of the district court is both civil and criminal.

8. **Court of Claims.**—The court of claims was established in 1855 to relieve Congress from passing upon private claims against the Government and allowing them by special bill. The State of West Virginia still pursues this antiquated system, but it is to be hoped that this method of bleeding the Treasury may be abandoned some day. The court of claims hears certain claims for money made against the United States and makes decision as to whether the Government ought to pay the money. Congress then has the simple duty of making an appropriation to pay the amount of the judgment in case the claim is allowed. There is a chief justice and four judges of the court of claims, appointed by the President in the same way that other judges are appointed.

9. **The Supreme Court of the District of Columbia.**—This court is created under the exclusive power of legislation possessed by Congress over the District. There is a chief justice

and five associates. Its jurisdiction is similar to that of the district courts, but is confined to cases arising in the District of Columbia.

10. **Territorial Courts.**—Each Territory has a supreme court composed of a chief justice and two associates, who hold their offices for four years. They are required to hold a term annually at the seat of government of the Territory. Every Territory is divided into three judicial districts, and district courts are held in each district by one of the justices of the supreme court at such times and places as may be prescribed by law. Appeals lie from the decisions of the supreme court of the District of Columbia, and from the Territorial courts, to the Supreme Court of the United States.

11. **Officers of the Courts.**—With the consent of the Senate the President appoints for each district a United States district attorney and a United States Marshal, who are officers of the circuit court as well as of the district court. The district attorney, under the supervision of the Attorney-General, represents the United States in all civil and criminal cases to which it is a party. The district attorney stands in the same relation to the Federal circuit and district courts that the prosecuting attorney of a county occupies with relation to the circuit court of a State.

The marshal is substantially a Federal sheriff. He is the ministerial officer of the Federal courts. He executes their orders and processes, and as a court officer he is to the United States court what the sheriff is to the state courts.

The Supreme Court has a *reporter* who reports, edits, and publishes the decisions in a series of volumes now called the "United States Reports."

Each court appoints its own clerk, and the circuit courts of appeals appoint their own marshals. The duties of these minor officers are similar to those performed by the corresponding officers in the state courts.

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The region between the Alleghany Mountains and the Ohio River is rich in local history. It offers an unworked field for the novelist and romancer. So little has been written of the region that many consider it quite barren of interest. The Puritan Pilgrim began to write and preserve his history from the day of his landing at Plymouth Rock. The West Virginia Pioneers came in widely scattered groups, and much of the history and incident relating to the early occupation of the country have been lost; but much remains. A million people have not established themselves on the western slope of the Alleghanies without making a record of their individuality and institutions that is worth preserving Every county, city, district, town, community, should have its local society for collection and preservation of every item of local history, incident, reminiscence, biography, genealogy, etc. There is not a village community in New England that does not have its local historian. There are about two hundred historical societies in Massachusetts. West Virginia is not too young to begin now with the work of recording and preserving its history. To those who have a fancy for work of this kind, these incomplete and meager bibliographical notes may not be without interest; and the teacher who desires to reenforce his text-book with additional reading may find them not unprofitable. The writer of these notes hopes some day to be able to publish, for the benefit of the lovers of local history, a complete annotated bibliography of the State.

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There are now over one hundred newspapers in West Virginia all of which are respositories of value to the discriminating local historian and antiquarian.

APPENDIX A.

A DECLARATION OF THE PEOPLE OF VIRGINIA, REPRESENTED IN CONVENTION, AT THE CITY OF WHEELING, THURSDAY, JUNE 13, 1861.

The true purpose of all government is to promote the welfare and provide for the protection and security of the governed, and when any form or organization of government proves inadequate for, or subversive of this purpose, it is the right, it is the duty of the latter to abolish it. The Bill of Rights of Virginia, framed in 1776, reaffirmed in 1830, and again in 1851, expressly reserves this right to a majority of her people. The act of the General Assembly, calling the Convention which assembled at Richmond in February last, without the previously expressed consent of such majority, was therefore a usurpation; and the Convention thus called has not only abused the powers nominally entrusted to it, but with the connivance and active aid of the executive, has usurped and exercised other powers, to the manifest injury of the people which, if permitted, will inevitably subject them to a military despotism.

The Convention, by its pretended ordinances, has required the people of Virginia to separate from and wage war against the government of the United States, and against citizens of neighboring States, with whom they have heretofore maintained friendly, social, and business relations:

It has attempted to subvert the Union founded by Washington and his co-patriots, in the purer days of the republic, which has conferred unexampled prosperity upon every class of citizens, and upon every section of the country:

It has attempted to transfer the allegiance of the People to an illegal confederacy of rebellious States, and required their submission to its pretended edicts and decrees:

It has attempted to place the whole military force and military operations of the Commonwealth under the control and direction of such confederacy for offensive as well as defensive purposes:

It has, in conjunction with the State executive, instituted wherever their usurped power extends, a reign of terror intended to supress the free expression of the will of the people, making elections a mockery and a fraud.

The same combination, even before the passage of the pretended ordinance of secession, instituted war by the seizure and appropriations of the property of the Federal Government, and by organizing and mobilizing armies, with the avowed purpose of capturing or destroying the Capital of the Union:

They have attempted to bring the allegiance of the people of the United States into direct conflict with their subordinate allegiance to the State, thereby making obedience to their pretended ordinances, treason against the former.

We, therefore, the delegates here assembled in convention to devise such measures and take such action as the safety and welfare of the loyal citizens of Virginia may demand, having maturely considered the premises, and viewing with great concern the deplorable condition to which this once happy Commonwealth must be reduced unless some regular adequate remedy is speedily adopted, and appealing to the Supreme Ruler of the Universe for the rectitude of our intentions, do hereby, in the name and on the behalf of the good people of Virginia, solemnly declare that the preservation of their dearest rights and liberties and their security in person and property, imperatively demand the reorganization of the government of the Commonwealth, and that all acts of said Convention and Executive, tending to seperate this Commonwealth from the

United States, or to levy and carry on war against them, are without authority and void; and that the offices of all who adhere to the said Convention and Executive, whether legislative, or executive or judicial, are vacated.

APPENDIX B.

AN ORDINANCE FOR THE REORGANIZATION OF THE STATE GOVERNMENT.

(Passed June 19, 1861.)

The People of the State of Virginia, by their Delegates assembled in Convention at Wheeling, do ordian as follows:

1. A governor, lieutenant governor, and attorney general for the State of Virginia, shall be appointed by this convention, to discharge the duties and exercise the powers which pretain to their respective offices by the existing laws of the state, and to continue in office for six months, or until their successors be elected and qualified; and the general assembly is required to provide by law for an election of governor and lieutenant-governor by the people as soon as in their judgment such election can be properly held.

5. A council, to consist of five members, shall be appointed by this convention, to consult with and advise the governor respecting such matters pretaining to his official duties as he shall submit for the consideration, and to aid in the execution of his official orders. Their term of office shall expire at the same time as that of the governor.

3. The delegates elected to the general assembly on the twenty-third day of May last, and the senators entitled under existing laws to seats in the next general essembly, together with such delegates and senators as may be duly elected under the ordinances of this convention, or existing laws, to fill vacancies who shall qualify themselves by taking the oath or affirmation hereinafter set forth, shall constitute the legislature of the State, to discharge the duties and exercise the powers pretaining to the general assembly. They shall hold their offices from the passage of this ordinance until the end of the terms for which they were respectively elected. They shall assemble in the city of Wheeling on the first day of July next, and proceed to organize themselves as prescribed by existing laws, in their respective branches. A majority in each branch of the members qualified as aforesaid, shall constitute a quorum to do business. A majority of the members of each branch thus qualified, voting affirmatively, shall be competent to pass any act specified in the twenty-seventh section of the fourth article of the constitution of the state.

4. The governor, lieutenant-governor, attorney general, members of the legislature, and all officers now in the service of the state, or of any county, city or town thereof, or hereafter to be elected or appointed for such service, including the judges and clerks of the several courts, sheriffs, commissioners of the revenue, justice of the peace, officers of the city and municipal corporations, and officers of militia; and officers and privates of volunteer companies of the State, not mustered into the service of the United States, shall each take the following oath or affirmation before proceeding in the discharge of the several duties:

"I solemnly swear (or affirm,) that I will support the constitution of the United States, and the laws made in pursuance thereof, as the supreme law of the land, anything in the constitution and laws of the state of Virginia, or in the ordinances of the convention which assembled at Richmond on the thirteenth of February, eighteen hundred and sixty-one, to the contary notwithstanding; and that I will uphold and defend the government of Virginia as vindicated and restored by the convention which assembled at Wheeling on the eleventh day of June, eighteen hundred and sixty-one."

5. If any elective officer, who is required by the preceding section to take such oath or affirmation, fail or refurse so to do, it shall be the duty of the governor upon satisfactory evidence of the fact, to issue his writ declaring the office to be vacant, and providing for a special election to fill such vacancy at some convenient and early day to be designated in said writ; of which due publication shall be made for the information of the persons entitled to vote at such election; and such writ may be directed, at the discretion of the governor, to the sheriff, or sheriffs of the proper county or counties, or to a special commissioner or commissioners to be named by the governor for the purpose. If the officer who fails or refuses to take such oath or affirmation be appointed by the governor, he shall fill the vacancy without writ, but if such officer be appointed otherwise than by the governor or by election, the writ shall be issued by the governor, directed to the appointing power, requiring it to fill the vacancy.

ARTHUR I. BOREMAN, *President.*

G. L. Cranmer, *Secretary.*

APPENDIX C.

AN ACT GIVING THE CONSENT OF THE LEGISLATURE OF VIRGINIA IN THE FORMATION AND ERECTION OF A NEW STATE WITHIN THE JURISDICTION OF THIS STATE.

(Passed May 13, 1862.)

1. Be it enacted by the General Assembly, That the consent of the Legislature of Virginia be and the same is hereby given to the formation and erection of the State of West Virginia, within the juristiction of this State, to include the counties of Hancock, Brooke, Ohio, Marshall, Wetzel, Marion, Monongalia, Preston, Taylor, Tyler, Pleasants, Ritchie, Doddridge, Harrison, Wood, Jackson, Wirt, Roane, Calhoun, Gilmer, Barbour, Tucker, Lewis, Braxton, Upshur, Randolph, Mason, Putnam, Kanawha, Clay, Nicholas, Cabell, Wayne, Boone, Logan, Wyoming, Mercer, McDowell, Webster, Pocahontas, Fayette, Raleigh, Greeenbrier, Monroe, Pendleton, Hardy, Hampshire, and Morgan, according to boundaries and under the provisions set forth in the constitution for the said State of West Virginia and the schedule thereto annexed, proposed by the convention which assembled at Wheeling, on the twenty-sixth day of November, eighteen hundred and sixty-one.

2. Be it further enacted, That the consent of the Legislature of Virginia be, and the same is hereby given, that the counties of Berkeley, Jefferson, and Frederick, shall be included in and form a part of the State of West Virginia whenever the voters of said counties shall ratify and assent to the said constitution, at an election held for the purpose, at such time and under such regulation as the commissioners named in the said schedule may prescribe.

3. Be it further enacted, That this act shall be transmitted by the executive to the senators and representatives of the commonwealth in congress together with a certified original of the said constitution and schedule, and the said senators and representatives are hereby requested to use their endeavors to obtain the consent of congress to the admission of the State of West Virginia into the Union.

4. This act shall be in force from and after its passage.

APPENDIX D.

ACT FOR THE ADMISSION OF WEST VIRGINIA INTO THE UNION, AND FOR OTHER PURPOSES.

Whereas the people inhabiting that portion of Virginia known as West Virginia did, by a convention assembled in the city of Wheeling, on the twenty-

sixth of November, eighteen hundred and sixty-one, frame for themselves a constitution, with the view of becoming a separate and independent State; and whereas at a general election held in the counties composing the territory aforesaid, on the third day of May last, the said constitution was approved and adopted by the qualified voters of the proposed State; and whereas the Legislature of Virginia, by an act passed on the thirteenth day of May, eighteen hundred and sixty-two, did give its consent to the formation of a new State within the jurisdiction of the said State of Virginia to be known by the name of West Virginia, and to embrace the following named counties, to-wit: Hancock, Brooke, Ohio, Marshall, Wetzel, Marion, Monongalia, Preston, Taylor, Tyler, Pleasants, Ritchie, Doddridge, Harrison, Wood, Jackson, Wirt, Roane, Calhoun, Gilmer, Barbour, Tucker, Lewis, Braxton, Upshur, Randolph, Mason, Putnam, Kanawha, Clay, Nicholas, Cabell, Wayne, Boone, Logan, Wyoming, Mercer, McDowell, Webster, Pocahontas, Fayette, Raleigh, Greenbrier, Monroe, Pendleton, Hardy, Hampshire and Morgan; and whereas both the convention and the legislature aforesaid, have requested that the new State should be admitted into the Union, and the constitution aforesaid being Republican in form, Congress doth hereby consent that the said forty-eight counties may be formed into a separate and independent State; Therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the State of West Virginia be, and is hereby, declared to be one of the United States of America, and admitted into the Union on an equal footing with the original States in all respects whatever, and until the next general census shall be entitled to three members in the House of Representatives of the United States; Provided, always, That this act shall not take effect until after the proclamation of the President of the United States hereinafter provided for.

It being represented to Congress that since the convention of the twenty-sixth of November, eighteen hundred and sixty-one, that framed and proposed the constitution for the said State of West Virginia, the people thereof have expressed a wish to change the seventh section of the eleventh article of said constitution by striking out the same and inserting the following in its place, viz.: The children of slaves born within the limits of this State after the fourth day of July, eighteen hundred and sixty-three, shall be free; and that all slaves within the said State who shall, at the time aforesaid, be under the age of ten years, shall be free when they arrive at the age of twenty-one years; and all slaves over ten and under twenty-one years shall be free when they arrive at the age of twenty-five years; and no slave shall be permitted to come into the State for permanent residence therein:" Therefore,

SEC. 2. Be it further enacted, That whenever the people of West Virginia shall, through their said convention, and by vote to be taken at an election to be held within the limits of the said State, at such time as the convention may provide, make and ratify the change aforesaid, and properly certify the same under the hand of the President of the convention, it shall be lawful for the President of the United States to issue his proclamation stating the fact, and thereupon this act shall take effect and be in force from and after sixty days from the date of said proclamation.

APPROVED December 31, 1862.

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